PROCEEDINGS

OF THE

American Society of International Law

AT ITS

SIXTH ANNUAL MEETING

HELD AT

WASHINGTON, D. C.

APRIL 25-27, 1912

BYRON S. ADAMS, PRINTER
Washington, D. C.
1912

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FOURTH SESSION

Saturday, April 27, 1912, at 10 o'clock a. m.

ANNUAL BANQUET

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OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

FOR THE YEAR 1912-1913.

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CONSTITUTION

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW.[1]

ARTICLE I.

Name.

This Society shall be known as the AMERICAN SOCIETY OF INTERNATIONAL LAW.

ARTICLE II.

Object.

The object of this Society is to foster the study of International Law and promote the establishment of international relations on the basis of law and justice. For this purpose it will co-operate with other societies in this and other countries having the same object.

ARTICLE III.

Membership.

Members may be elected on the nomination of two members in regular standing by vote of the Executive Council under such rules and regulations as the Council may prescribe.

Each member shall pay annual dues of five dollars and shall thereupon become entitled to all the privileges of the Society, including a copy of the publications issued during the year. Upon failure to pay the dues for the period of one year a member may, in the discretion of the Executive Council, be suspended or dropped from the rolls of membership.

Upon payment of one hundred dollars any person otherwise entitled

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[1]The history of the origin and organization of the American Society of International Law can be found in the Proceedings of the First Annual Meeting, at p. 23.

The Constitution was adopted January 12, 1906.

to membership may become a life-member and shall thereupon become entitled to all the privileges of membership during his life.

A limited number of persons not citizens of the United States and not exceeding one in any year, who shall have rendered distinguished service to the cause which this Society is formed to promote, may be elected to honorary membership at any meeting of the Society on the recommendation of the Executive Council. Honorary members shall have all the privileges of membership, but shall be exempt from the payment of dues.

ARTICLE IV.

Officers.

The officers of the Society shall consist of a President,[2] nine or more Vice-Presidents, the number to be fixed from time to time by the Executive Council, a Recording Secretary, a Corresponding Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council composed of the President, the Vice-Presidents, *ex-officio*, and twenty-four elected members, whose term of office shall be three years, except that of those elected at the first election, eight shall serve for the period of one year only and eight for the period of two years, and that any one elected to fill a vacancy shall serve only for the unexpired term of the member in whose place he is chosen.

The Recording Secretary, the Corresponding Secretary and the Treasurer shall be elected by the Executive Council from among its members. The other officers of the Society shall be elected by the Society, except as hereinafter provided for the filling of vacancies occurring between elections.

At every annual election candidates for all the offices to be filled by the Society at such election shall be placed in nomination by a Nominating Committee of five members of the Society previously appointed by the Executive Council, except that the officers of the first year shall be nominated by a committee of three appointed by the Chairman of the meeting at which this Constitution shall be adopted.

All officers shall be elected by a majority vote of members present and voting.

All officers of the Society shall serve until their successors are chosen.

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[2]See *Amendments*, Article I, p. x.

ARTICLE V.

Duties of Officers.

1. The President shall preside at all meetings of the Society and of the Executive Council and shall perform such other duties as the Council may assign to him. In the absence of the President at any meeting of the Society his duties shall devolve upon one of the Vice-Presidents to be designated by the Executive Council.

2. The Secretaries shall keep the records and conduct the correspondence of the Society and of the Executive Council and shall perform such other duties as the Council may assign to them.

3. The Treasurer shall receive and have the custody of the funds of the Society and shall disburse the same subject to the rules and under the direction of the Executive Council. The fiscal year shall begin on the first day of January.

4. The Executive Council shall have charge of the general interests of the Society, shall call regular and special meetings of the Society and arrange the programmes therefor, shall appropriate money, shall appoint from among its members an Executive Committee and other committees and their chairmen, with appropriate powers, and shall have full power to issue or arrange for the issue of a periodical or other publications, and in general possess the governing power in the Society, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation, failure to elect, or other cause, such appointees to hold office until the next annual election.

Nine members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

5. The Executive Committee shall have full power to act for the Executive Council when the Executive Council is not in session.

6. The Executive Council shall elect a Chairman who shall preside at its meetings in the absence of the President, and who shall also be Chairman of the Executive Committee.

ARTICLE VI.

Meetings.

The Society shall meet annually at a time and place to be determined by the Executive Council for the election of officers and the transaction of such other business as the Council may determine.

Special meetings may be held at any time and place on the call of the Executive Council or at the written request of thirty members on the call of the Secretary. At least ten days' notice of such special meeting shall be given to each member of the Society by mail, specifying the object of the meeting, and no other business shall be considered at such meeting.

Twenty-five members shall constitute a quorum at all regular and special meetings of the Society and a majority vote of those present and voting shall control its decisions.

ARTICLE VII.

Resolutions.

All resolutions which shall be offered at any meeting of the Society shall, in the discretion of the presiding officer, or on the demand of three members, be referred to the appropriate committee or the Council, and no vote shall be taken until a report shall have been made thereon.

ARTICLE VIII.

Amendments.

This Constitution may be amended at any annual or special meeting of the Society by a majority vote of the members present and voting. But all amendments to be proposed at any meeting shall first be referred to the Executive Council for consideration and shall be submitted to the members of the Society at least ten days before such meeting.

AMENDMENTS.

ARTICLE I.[3]

Article IV is hereby amended by inserting after the words "The officers of the Society shall consist of a President," the words "an Honorary President."

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[3]This amendment was adopted at the business meeting held April 24, 1909.

SIXTH ANNUAL MEETING

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW.

HALL OF THE AMERICAS, PAN-AMERICAN BUILDING, WASHINGTON, D. C., APRIL 25-27, 1912.

FIRST SESSION.

THURSDAY, APRIL 25, 1912, 8 O'CLOCK P. M.

The meeting was called to order by the President of the Society, Honorable ELIHU ROOT, who spoke as follows:

LADIES AND GENTLEMEN: It is a pleasure for the sixth time to welcome the members of the American Society of International Law and their friends and guests to the annual meeting of the Society.

The year that has passed has been rather a year of tumult and confusion than of peace and construction in the field whose interest brings us together.

The war between Italy and Turkey, which was begun by a declaration on the 29th of September, 1911, has dragged its slow course along, notwithstanding the increased sentiment throughout the world in favor of peace.

The affairs of China have exhibited that great revolutionary outbreak, which the observers of the waning powers of the Manchu Dynasty have long foreseen must be but a question of a few years; and the establishment of a republic in the Chinese Empire, while it appears to be but a matter of internal change, nevertheless must affect most seriously one of the most interesting fields of international concern, that is, the extraterritoriality of the Powers.

Our sister republic, Mexico, has unfortunately fallen into a state of widespread tumult, and in large parts of the country the bonds of order seem to have been altogether thrown off. The disturbances in

Mexico have led to a rather interesting development of the law of neutrality on the part of our country, in the passage of a law authorizing the President, whenever he finds that in any American country there are conditions of domestic violence promoted by the use of arms and munitions of war, which may be obtained in the United States, to make proclamation of that fact, whereupon it is made unlawful to ship any arms or munitions of war to such country, thus extending our old principle of neutrality to the conditions in which belligerency have not been recognized, and in which, for the peace of the world and for the performance of our duties of good neighborhood and real international friendship, we deny to our own people the right to trade or gain on the misfortunes of our neighbors. That law contains, I think, an interesting recognition of a certain tie between the United States and all other American peoples, by being, in its terms, co-extensive with the scope of the Monroe Doctrine, and making this self-denying ordinance apply to all American countries.

At the same time there have been steps taken and things done which are an offset to these disturbances. The strained relations between England and Germany and between France and Germany over the difficulty regarding Morocco, which put all the civilized world into a condition in which it was holding its breath in apprehension, have been dissipated and the dispute peaceably settled by the exercise of good temper and sound judgment. We all realize, I think, that these conditions would in former generations have led inevitably to war, but in this day of the world they have yielded to the continually strengthening power of restraint coming from an advanced state of public opinion regarding the right to engage in war, and the increasing influence of restraint growing out of the enormous interests involved in international commerce.

There have been a number of conferences which have been interesting, and which have been laying the foundation for better international relations. The Central American Conference at Managua on the 3rd of January of the present year; the International Conference regarding Industrial Property held in this city, in May, 1911, resulting in a convention signed by a large number of the Powers of the world; the International Sanitary Conference held in Paris in October, 1911; the International Opium Conference at The Hague in December, 1911, are conspicuous illustrations.

There was another conference, held last August, which has an

important international bearing. That was a conference of the leading economists of the world, which was called under the auspices of the Carnegie Endowment for International Peace. Invitations were sent to the principal authorities of the world on economics to meet at Berne for the purpose of considering and laying out a program for the work of the Division of Economics and History of the Carnegie Endowment, the object of which is to bring about a thorough, scientific and systematic inquiry into the causes and economic effects and bearings of war; so that men who wish to argue in favor of peace will, instead of continually repeating over and over the obvious, have some substantial and substantiated facts to present in support of their arguments. That conference was very interesting and successful, and the gentlemen who participated in it are now engaged in behalf of the Endowment in carrying on the different branches of the investigations which were laid out in the program adopted.

Secretary Knox has just returned from a tour in which, by the kind invitation and hospitality of the Central American states and the other states about the Caribbean, he has visited them as the guest of their governments, and has renewed to them the expression of the really unselfish feeling of the United States toward all of them and the assurance that our only desire is to be of service to them and to do what becomes a larger and more powerful neighbor toward helping them along the road of orderly and stable government, which presents so many difficulties to all of us.

During the year treaties of arbitration have been made between Argentine and Venezuela and between Denmark and France. Treaties of arbitration were also concluded between the United States and Great Britain and between the United States and France in August, 1911. These were advised and consented to by the Senate with some rather material amendments, and have not been resubmitted to the English or the French Governments.

With this very brief review of the international affairs of the year, I will proceed to comply with the custom of the Society by making some observations regarding a specific subject within the field of international law. The subject which I have selected is "The Real Significance of the Declaration of London." I said something about the Declaration of London a few days ago to a very distinguished jurist, and I immediately perceived by the expression of his face that he did not know what it was. Of course, that cannot be true of anybody

in the Society, but the knowledge which people generally have regarding this particular transaction or document is far out of proportion to the real importance of the thing itself.

Address of Hon. Elihu Root, President of the Society, on The Real Significance of the Declaration of London.

The principal achievement of The Hague Conference of 1907 was the Convention for an International Prize Court. That convention provided for a real and permanent court composed of judges who were to be appointed by the contracting Powers for terms of six years, were required to be "judges of known proficiency in questions of international maritime law and of the highest moral reputation," and were to be paid a stated compensation from a fund contributed by all the Powers.

Jurisdiction was conferred upon the court to review on appeal all judgments of national prize courts. By a subsequent agreement, for the purpose of avoiding difficulties presented by the constitutions of some of the signatory Powers, an alternative procedure was authorized under which the new court might pass upon the question involved in the case of prize *de novo*, and notwithstanding any judgment of the national prize court, instead of passing upon it by way of appeal from that judgment. Article 7 of the convention provides:

> If a question of law to be decided is covered by a treaty in force between the belligerent captor and a Power which is itself or whose subject or citizen is a party to the proceedings, the court is governed by the provisions of the said treaty.
>
> In the absence of such provisions the court shall apply the rule of international law. If no generally recognized rule exists the court shall give judgment in accordance with the general principles of justice and equity.

In estimating the value of such an agreement among the civilized Powers it is worth while even for a student of international law to recall the wide range and critical importance of the questions to be included within the jurisdiction of the new court.

When war breaks out between two considerable maritime Powers the commerce of the whole world is immediately affected. Each belligerent nation undertakes, so far as it can, to cripple its enemy

both by direct military and naval operations and by cutting off supplies, interfering with sources of income, and generally weakening the enemy's national power to maintain an army and navy.

The liability of enemy merchant ships to capture tends to throw the commerce formerly carried on by the belligerent nations into the hands of neutrals while the necessary policy of each belligerent urges it to circumscribe and prevent so far as it can the neutral commerce with the other belligerent. Blockades and searches and seizures for carrying contraband goods are familiar methods of giving effect to this policy. Added to this is the necessity of constant watchfulness by belligerents to prevent neutral vessels from rendering direct service to the enemy's forces, such as the transportation of officers and troops or messengers, or the transmission of intelligence. In this way belligerents fall into an attitude of suspicion toward neutral vessels and unfriendliness toward neutral commerce, and the peaceable commerce of the world falls into an attitude of resenting what it regards as unwarranted interference.

The most striking illustration of this tendency is to be found in the tremendous conflicts of the Napoleonic wars, when Pitt and Napoleon waged war not merely with armies and navies but with British orders in council and Continental decrees. The Prussian Decree which began the series at the instance of Napoleon, on the 28th of March, 1806, declared the coast of the North Sea closed against Great Britain. On the 8th of April, 1806, Great Britain retaliated for that decree by the first order in council, which declared the blockade of the Ems, the Weser, the Elbe, and the Trave. On the 16th of May, 1806, came the second order in council declaring a blockade of the whole coast of the Continent from the Elbe to Brest. On the 14th of October, 1806, Napoleon retaliated with the famous Berlin Decree, which prohibited all commerce with England. On the 7th of January, 1807, another British order in council declared all neutral trading with France, or from port to port with any possession of France, or with any of the allies of France anywhere, to be ground for condemnation. On the 17th of December, 1807, Napoleon's Milan Decree declared a sentence of outlawry upon England and all English ships. It was impossible that such a process should not involve all Europe in a universal war; and an aftermath of England's enforcement of her policy upon the neutral shipping of the United States was the War of 1812.

The Civil War in the United States gave rise to a multitude of controversies between the United States and Great Britain, arising on one side from the seizure by the United States of numerous vessels charged with directly or indirectly attempting to violate the blockade of the southern coast, or with carrying contraband, and arising on the other side from the fitting out of Confederate cruisers in the neutral ports of Great Britain. The negotiations which led to the settlement of both classes of these claims by arbitration under the Treaty of Washington involved no slight strain upon the temper and good sense of both nations, and the result was reached against most violent protest on the part of many who preferred war to concession.

In the recent war between Russia and Japan a feeling of strong resentment was created in England by Russia's course in sinking the British merchantmen, the *Knight Commander,* the *Saint Kilda,* the *Hipsang,* and the *Allenton,* and in the capture of the *Malacca* by Russian vessels which had passed the Dardanelles and the Suez Canal as merchantmen and then converted themselves into cruisers.

There is no more fruitful source of international controversy, of international resentment and dislike, than in the great multitude of questions relating to the rights and wrongs of neutrals and of belligerents in a war between maritime Powers. The tendency always is for the war to spread through these controversies and exasperated feelings, and the adjudication of questions by national prize courts naturally fails to allay the irritation. Provision for the international judicial determination of such questions is adapted not only to preserve the substantial rights of neutral commerce and of belligerents, but also to prevent the spread of war much as municipal ordinances are framed to check the spread of fire, and sanitary regulations to prevent the communication of infectious disease. Considered by itself, the concurrence of the major part of the civilized world in the project of this convention was an event of the first importance in the development of international peace.

When Great Britain, however, came to consider the ratification of the Prize Court Convention she found herself confronted by practical considerations arising from her insular position, her dependence upon foreign food supplies, the wide extension of her colonial empire, her enormous merchant marine, and the relation between the effectiveness of her great navy and her national existence. The effect of

these considerations upon the Government of Great Britain is best stated in the words of a communication which that government addressed on the 27th of February, 1908, to the other principal maritime Powers. In that communication Sir Edward Grey said:

Article 7 of the convention provides that, in the absence of treaty stipulations applicable to the case, the court is to decide the appeals that come before it, in accordance with the rules of international law, or if no generally recognized rules exist, in accordance with the general principles of justice and equity.

The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible within the period for which the conference assembled, to arrive at an understanding. The impression was gained that the establishment of the International Prize Court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.

His Majesty's Government therefore propose that another conference should assemble during the autumn of the present year, with the object of arriving at an agreement as to what are the generally recognized principles of international law, within the meaning of paragraph 2 of Article 7 of the convention, as to those matters wherein the practice of nations has varied, and of then formulating the rules which, in the absence of special treaty provisions applicable to a particular case, the court should observe in dealing with appeals brought before it for decision.

That is to say, the realization of the International Prize Court must be postponed until an agreement can be reached upon the rules of law and the principles of justice and equity which the court is to apply to international controversies. No dissent from this view appears to have been expressed and, pursuant to the British invitation, Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, The Netherlands, and the United States, sent their delegates to the proposed conference in London. The conference met on the 4th of December, 1908, and continued to the 26th of February, 1909.

The task of the conference was delicate and difficult. The Declaration of Paris in 1856 had, it is true, furnished four rules as a point of departure:

(1) Privateering is and remains abolished.
(2) The neutral flag covers enemy's merchandise with the exception of contraband of war.
(3) Neutral merchandise, with the exception of contraband of war, is not capturable under the enemy's flag.
(4) Blockades, in order to be obligatory, must be effective; that is to say, maintained by a force sufficient to really prevent access to the coast of the enemy.

But the half century which had elapsed since the Declaration ot Paris had shown that these rules left uncovered a great field of controversy and that they had themselves given rise to numerous questions for which they afforded no solution. The divergent views upon these subjects of controversy had become intrenched in many traditional ideas of different nations as to the requirements of their national interests either as possible belligerents or possible neutrals, and these ideas made concessions difficult, so difficult that at the Second Hague Conference it had been found quite impracticable to reach any conclusions upon questions of this character having real importance.

The members of the London Conference addressed themselves to their work with ability, knowledge, and good temper, and they agreed upon a code of rules which they called a "Declaration concerning the Laws of Naval War," and which is known as the Declaration of London. The first chapter of the declaration, containing 21 articles, deals with the law of blockade in time of war. The second chapter covers the law of contraband, in 23 articles. The third chapter contains 3 articles upon the law of unneutral service. The fourth chapter, 7 articles, on the destruction of neutral prizes. The fifth chapter, 2 articles, on transfer of flag. The sixth chapter, 4 articles, on enemy character. The seventh chapter, 2 articles regarding convoy. The eighth chapter, 1 article concerning resistance to search. The ninth chapter, an article upon compensation. Then follow 7 final articles. The preamble of the declaration declares the Powers (naming them):

Considering the invitation which the British Government has given to various Powers to meet in conference in order to determine together as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which in the unfortunate event of a naval war an agreement as to the said rules would present, both as regards peaceful commerce, and as regards the belligerents and as regards their political relations with neutral governments;

Considering that the general principles of international law are often in their practical application the subject of divergent procedure;

Animated by the desire to insure henceforward a greater uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval:

Have appointed as their plenipotentiaries, that is to say: [Names of plenipotentiaries.]

Who, after having communicated their full powers, found in good and due form, have agreed to make the present declaration:—

Preliminary Provision.

The signatory Powers are agreed in declaring that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

It is interesting to observe that in the rules regarding contraband, the doctrine of continuous voyages, with which the Americans were so much concerned during the Civil War, is applied to absolute contraband but not to conditional contraband; that the great extension of the list of contraband articles, which, in the war between Russia and Japan, caused such general dissatisfaction among neutrals and threatened to nullify the doctrine that free ships make free goods, has been checked by a definite list of articles, which are not under any circumstances to be considered contraband, and by carefully framed provisions requiring affirmative proof that goods are destined for the use of the armed forces or a government department of the enemy as a condition upon the right to seize conditional contraband. It is also interesting that the question so much discussed at the time of the *Trent* affair between England and the United States has been disposed of by the provision of Article 47 that "any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war even though there may be no ground for the capture of the vessel."

This by implication excludes civil agents such as Mason and Slidell from capture but approves the method followed by Captain Wilkes in taking persons assumed to be liable to capture from the vessel and releasing the vessel.

It is not, however, my purpose to discuss the specific provisions of these rules.

The declaration was accompanied by a very lucid and illuminating

report prepared by M. Renault, which was presented to the conference upon behalf of the drafting committee and which, under Continental usage, is to be treated as an authoritative explanation of the text. The report says of the declaration:

The body of rules contained in the declaration, which is the result of the deliberations of the Naval Conference, and which is to be entitled Declaration concerning the Laws of Naval War, answers well to the desire expressed by the British Government in its invitation of February, 1908. The questions of the program are all settled except two, concerning which explanations will be given later. The solutions have been deduced from the various views or different practices and correspond to what may be called the *media sententia.* They do not always harmonize absolutely with the views peculiar to each country, but they do not shock the essential ideas of any. They should not be examined separately, but as a whole, otherwise one runs the risk of the most serious misunderstandings. In fact, if one considers one or more isolated rules either from the belligerent or the neutral point of view, he may find the interests with which he is especially concerned have been disregarded by the adoption of these rules, but the rules have their other side. The work is one of compromise and a mutual concession. Is it, as a whole, a good work?

We confidently hope that those who study it seriously will answer affirmatively. The declaration substitutes uniformity and certainty for the diversity and the obscurity from which international relations have too long suffered. The conference has tried to reconcile in an equitable and practical way the rights of belligerents and those of neutral commerce; it is made up of Powers placed in very unlike conditions, from the political, economic, and geographical points of view. There is on this account reason to suppose that the rules on which these Powers are in accord take sufficient account of the different interests involved, and hence may be accepted without disadvantage by all the others.

Two questions proposed by Great Britain to the conference remain unanswered: One, relating to the transformation of merchant vessels into warships on the high seas, and the other, the question whether the nationality or the domicile of the owner should be adopted in determining whether property is enemy property. Upon these questions the divergence of views remains unsettled. But throughout the great field of controversy in this branch of international law all existing differences have been settled by fair agreement upon just and reasonable rules.

Professor Westlake said, in the *Nineteenth Century,* for March, 1910:

That the ten greatest naval powers of the world should have met in conference on the laws of naval war as affecting neutrals, and that after careful consideration they should have agreed upon a code so comprehensive as that contained in the Declaration of London, would alone suffice to make the year nineteen hundred and nine memorable to all who are interested in the improvement of international relations. It remains for the year nineteen hundred and ten to make that code binding on the parties by ratification, after which the natural course of events will speedily make it the binding code of the world.

It appeared to many of us, indeed, when the agreement was reached and the conference dissolved, that a great thing had been done and that the way had been cleared to carry into effect the Prize Court Convention and to establish upon a permanent basis the judicial settlement of this class of international controversies through the application of an accepted code of law.

Unfortunately, that belief has not been justified. An excited controversy immediately arose regarding the effect of the rules contained in the Declaration of London upon the interests of Great Britain. One set of objectors declared that the rules sacrificed the interests of Great Britain as a belligerent. Another set asserted that the rules destroyed the interests of Great Britain as a neutral. Both could not be true, yet each set of objectors continued strenuously to oppose the declaration upon its own grounds.

An examination of the arguments on both sides in Great Britain leads to the conclusion that Mr. Norman Bentwich sums up the controversy fairly when he says, in the *Fortnightly Review:*

Great Britain should now be in a position to ratify The Hague Prize Court Convention, when at least she has made the necessary changes in her national prize law. She has come out very well indeed from the international bargaining: she had most to lose by the previous uncertainty; she has gained most by the settlement. At Paris, in 1856, she gave up one of her most powerful belligerent rights—the right to capture enemy property in neutral ships. Now in London she has not given up a single established belligerent right of value, her sole concession being on the question of convoy which is more apparent than real; and, on the other hand, she has gained a number of safeguards for her neutral commerce, and a number of limitations of the alleged belligerent rights of other Powers. There is indeed a naval school which is bitterly hostile to the ratification of the declaration, on the ground that by it England gives up certain national claims of long standing and concedes certain rights against which she has long

struggled. But the claims we give up have not been effectively exercised by us, the rights we concede have regularly been practised against us.

Nevertheless, the Prize Court Bill, introduced in Parliament to give effect to the convention and the declaration, passed the House of Commons but was rejected by the House of Lords, and so the matter stands.

This is unfortunate not merely because the rules of law contained in the declaration are wise and just and would be beneficial to the world, but because the most promising forward movement toward the peaceable settlement of international disputes is frustrated by the kind of treatment which, if persisted in, must apparently prevent all forward movement in the same line. The Prize Court Convention is representative of the general movement for judicial settlement. The Declaration of London is representative of the agreement upon the rules of international law which is essential to the establishment of the practice of judicial settlement in all other branches of international controversy.

For some time past there has been a growing impression among men familiar with international affairs that the obstacles to the development of any real system for the submission of international disputes to impartial decision are to be found not so much in the unwillingness of nations to submit their disputes to such a decision, but in the lack of adequate machinery through which such decisions may be secured. The tendency of arbitrations in which representatives of the disputing countries are joined with eminent publicists from other countries for the determination of international controversies is not to decide questions of fact and law, but it is to negotiate a settlement. Arbitrators as a rule act as diplomatists under the diplomatic sense of honorable obligation rather than as judges under the judicial sense of honorable obligation. Their tendency is to do what they think is wise and for the best interests of all concerned and to get the controversy disposed of in some way without too much ill feeling upon either side. In this process the frequent failure of international law to furnish any certain or undisputed guide for action affords free opportunity for the personal predilections of the arbitrator, often colored or determined by the prevailing opinions in the country from which he comes; and these opinions are often quite unlike those which prevail among the people of either of the disputing countries. If often happens,

therefore, that the selection of the arbitrators is the most critical and decisive step in the arbitration. It is very difficult to apply to such a proceeding the analogy of a judicial proceeding under municipal law for the trial and decision of cases between private litigants. It may well be that countries are unwilling to have their interests disposed of in that way, although they would be perfectly ready to submit their cases to the decision of judges acting under the judicial sense of responsibility. Many of us are convinced that the true line of development for the peaceable settlement of international controversies is to be found in the establishment of a real international court which shall hear and determine questions instead of negotiating a settlement of them. This question was much discussed in The Hague Conference of 1907, which approved and recommended to the Powers the adoption of a draft convention for the creation of a Judicial Arbitral Court to be composed of judges appointed for fixed periods with stated compensation and chosen from persons "fulfilling the conditions qualifying them in their respective countries to occupy high legal posts, or to be jurists of recognized competence in matters of international law." The procedure, powers, and jurisdiction of the court were all provided for and the draft convention as approved by the conference was defective only in not determining how the judges should be appointed. The determination upon this matter was prevented by difference of opinion between the larger and the smaller Powers represented in the conference. The provision for a general judicial court with jurisdiction to hear and determine all matters of international dispute was thus carried within one step of the completeness which was reached in the convention for the International Prize Court. The Prize Court thus became the advance guard of the proposed judicial system, the experiment upon which the success of the whole plainly depends. President Roosevelt, in his message to Congress of December 3, 1907, said truly:

> Not only will the International Prize Court be the means of protecting the interest of neutrals, but it is in itself a step toward the creation of the most general court for the hearing of international controversies, to which reference has just been made. The organization and action of such a Prize Court cannot fail to accustom the different countries to the submission of international questions to the decision of an international tribunal, and we may confidently expect the results of such submission to bring about a general agreement upon the enlargement of the practice.

The relations between the project for the Prize Court and the project for the general Judicial Arbitral Court are so manifest that the United States has already proposed to the other Powers an enlargement of the jurisdiction of the Prize Court so that any question between the signatory Powers can be heard and determined by the judges of the Prize Court. This was done by instructions to the delegates of the United States at the London Conference, dated February 6, 1909, by an identic circular note to the Powers represented at that conference, dated March 5, 1909, and by a formal communication from the Department of State to the Powers, dated October 18, 1909. The form given to the proposal in the last mentioned communication from the American State Department was that there should be—

a further agreement that the International Court of Prize established by the Convention signed at The Hague, October 18, 1907, and the judges thereof shall be competent to entertain and decide any case of arbitration presented to it by a signatory of the International Court of Prize, and that when sitting as a Court of Arbitral Justice the said International Court of Prize shall conduct its proceedings in accordance with the draft convention for the establishment of a Court of Arbitral Justice, approved and recommended by the Second Hague Peace Conference, on October 18, 1907.

I am advised that this proposal was favorably received and that action to give it effect in some practicable form only awaits the ratification of the Prize Court Convention. This line of advance also is thus blocked by the failure to confirm the Declaration of London.

This review of the origin and nature of the Declaration of London and of the attendant conditions exhibits the true significance of the declaration. It is not merely a code of useful rules. It is necessary to the existence of the International Prize Court and therefore to the existence of any Judicial Arbitral Court. It is the one indispensable forward step without which no practical progress can now be made in the further development of a system of peaceable settlement of international disputes. It is to be hoped that a fuller realization of its far-reaching importance will soon lead to its acceptance. I cannot avoid the conviction that a broad-minded and statesmanlike treatment of this constructive measure for practical progress in international relations, is of greater value than merely benevolent but academic declarations in favor of peace which are to be found in general treaties of arbitration and in diplomatic correspondence and in public speeches.

Indeed, the whole practice of making general treaties of arbitration cannot fail to be discredited by the failure, if there is to be a failure, of the Prize Court Convention, for the cynical are sure to question the sincerity of general treaties of arbitration covering the whole field of international relations between nations which refuse to assent to this convention covering but a small part of the same field.

The PRESIDENT. Ladies and Gentlemen, the Society is very much honored, and I am sure you will all share with me in the pleasure received, from the presence here to-night of one of the greatest authorities upon international law of the continent of Europe.

I have the pleasure of introducing to you Señor Pasquale Fiore, a Senator of Italy, Professor of International Law in the University of Naples, who has prepared for us a discourse entitled "Some Considerations on the Past, Present and Future of International Law."

This paper has been translated into English and is ready for distribution. Señor Fiore will give to us now a résumé of the paper in French.

ADDRESS OF SEÑOR PASQUALE FIORE, OF ITALY,

on

SOME CONSIDERATIONS ON THE PAST, PRESENT AND FUTURE OF INTERNATIONAL LAW.*

[Translation.]

Mr. President and Gentlemen:

It stands out as one of the greatest incidents in my life that I have been able to come to America, which was the great aspiration of my compatriot, Christopher Columbus. The famous navigator has always maintained a unique fame, not so much because he discovered this country, as because he set sail determined to discover it, and firmly convinced that he would find it. The inspiration of his immortal genius continues to manifest itself through the length and breadth of your country, where all things are admirable, where all things are majestic, where unremitting, inexhaustible activity is fostered, even as was the genius who discovered it, by confidence in success.

*Translated from the French of Dr. Theodore Henckels, of Washington, D. C.

I have always admired that restless activity which characterizes your individual and national life. Those who conquer by reason of their firm belief that they will conquer, set the pace and impel others to pursue success; and in this way the activity of the American in industry, in commerce, in the development of civil and democratic institutions, in all that has to do with the happiness and prosperity of human life, has far exceeded the activity of the people of Europe. It is due to the fact that here the spirit of our Columbus enters into all your activities, believing that success is the logical result of the conviction of success and the striving for it.

At the beginning, the main object was to attain material wealth. But now, after realizing prosperity, Americans are striving for a nobler future; for the welfare of humanity, which has become the goal even of multi-millionaires, such as Carnegie, prototype of the philanthropist; the practical idealist, who has wished to devote a part of the millions that had become a burden to him, to the development of the science of international law, for the furtherance of the progress of civilization in behalf of the welfare of humanity.

Other institutions, and among these your own Society, which aims to establish right and justice as the bases of international relations, pursue the same goal.

Yourselves, even as the jurists throughout the world enlisted in the same cause, shall certainly attain that noble object, if you and all the rest, animated by the same desire, do not lose faith in the certainty that success will come.

I am firmly convinced that we will conquer.

Dear and distinguished colleagues! Your honored invitation has touched me deeply; it has set me thinking; it has drawn me toward you. I thank you for it from the bottom of my heart. I rejoice, distinguished jurists, Americans, to be with you, in order that I may present to you, from my point of view, what may be useful in providing for the juridical organization of the international society, and for developing and perfecting the concept of the law that is to govern it.

I am not able to enlarge upon many matters of great importance, at once worthy of your association and of your high standing. It is my purpose to present to you my scientific conclusions, in order that I may profit by your discussions; to submit them to your examination and to the impartial and enlightened criticism of the press. I

wish to offer my public testimony of esteem for you all, American jurists and publicists, who pursue with such great zeal and concern the noble idea of insuring the pre-eminence of law in the international society.

I hope to contribute one little stone to the construction of the great edifice, fully trusting in your fraternal kindness and discretion.

I have the honor to present to you some general considerations regarding the past, in order to explain the present and to enable us to prepare for the future of international law. It is impossible to examine in full detail a subject so complicated.

To study the present by what has taken place in the past, and to explain the causes that have prevented or retarded the development of international law and the formation of a real juridical society between the nations, it would be necessary to make a careful search of the public and private history of diplomacy; to ransack the hidden motives for innumerable acts; to interrogate the history of international relations, and disclose their secrets. In this way only can we fully understand the present and prepare for the future. Such a presentation would require volumes, and could not possibly be embodied in an address. I must confine myself to the presentation of some general considerations upon the past and the present, and then submit to you what I believe we must do with regard to the future.

How are we to explain that, having bequeathed to us admirable monuments of their doctrine in all the other branches of law, the jurists of antiquity have contributed no important works relating to international law? The answer is apparent if we remember that the concept of international law could not present itself as between the states of antiquity. The great obstacle to the concept of international law was the absence of all idea of a juridical community. This idea did not exist in Greece, where the idea of community was restricted to those belonging to the same native land.

Theocratic states denied community ties with the peoples that did not share their beliefs. The Romans recognized community only with those who belonged to the empire; and their statesmanship was inspired by the proud ambition to make imperial colonies of all the peoples. This is the reason why the true concept of international law could not take form in those times.

Jesus Christ proclaimed the unity of mankind and the fraternity of all peoples: *"Non est Judaeus, neque Graecus; non est servus nec*

liber; non est masculus, neque foemina. Omnes enim vos unum estis, in Christo Jesu." This is the true idea of humanity, wider and more complete than is presented in all the philosophies of the world.

Again, the real concept of community among all the peoples of the universe met a new obstacle in the fatal error of the Papacy, insisting that the whole world be compelled to adopt the doctrines of the Catholic Church and heresy be extirpated. A new form of dualism came to be established between the orthodox Christians and the heretics, and the most cruel wars were waged in the defense of faith. The principles of justice and humanity were trampled under foot, in the name of the religion of Christ, which is a religion of love and peace! This was the sanguinary period of the wars of religion and of intolerance, and of the persecution of the Protestants.

Let us throw a veil over the horrible war against the Albigenses, which has been called "holy," and which Chateaubriand termed "an abominable episode" of modern history. Let us also pass by the Crusades, undertaken to exterminate those who would not accept the faith. Nor shall we consider at length the famous "Inter caetera" bull (1493) by which Alexander VI granted to the King of Spain the right to seize the territories newly discovered in America, in order to spread the teachings of the Evangel.

These belong to the history of the past; but they explain in a measure why the concept of community between all the peoples of the world has been absent—absent even after Jesus Christ had proclaimed the widest and most complete idea of humanism, wider and more complete than that conceived by Buddha, by Zoroaster, or by the Greek and Roman philosophers.

The exaggerated pretensions of the Papacy provoked an opposition, which was silent at first, and later on became outspoken. This opposition began by a discussion of the respective rights of the Papacy and of the Emperor, which led to the conclusion that the power of the Emperor also came from God, who had conferred two swords wherewith to govern the Christian world, one upon the Pope and the other upon the Emperor.

Thence arose the rivalry between the two powers; and then we come to the Reformation. This is not the place to enter into a lengthy review of the long and bloody struggle, instigated by the policy of Richelieu, and continued by Mazarin. The final result was to liberate the state from subjection to the tutelage of the Church, and to make

the civil government independent of religious doctrine. The struggle had for its aim to establish liberty of conscience and the just principles of the modern state, that is, to separate the public right of the state from the authority of theology and the Bible. Our compatriot, Alberico Gentile, who must be considered as the founder of the science of international law, had directed all his efforts to the same end. To him belongs the distinction of having emancipated the science of international law from the blind authority of the Bible. He proclaimed the authority of rational principles and aimed at community of rights between the nations, in accordance with the law of nature. In the field of legal science, he accomplished what another of my compatriots, Galileo, had succeeded in accomplishing in the field of the physical sciences: emancipation from the authority of the Church.

The new principles of public law were established in the treaty of Westphalia. The recognition of the three faiths: Catholic, Lutheran and Calvinistic, consecrated by this treaty, represents the formal acknowledgment of the separation of the interests of the Church and the state. The concept of community, independent of the bond of nationality, and independent of religious belief, was recognized. It is the point of departure of modern international law, and modern history.

When the independence of the states and their political autonomy were acknowledged, it became necessary to devise a system of juridical rules for their coexistence.

From the beginning it had been believed that, to safeguard the independence of each, it would be necessary to maintain a certain balance of military forces and a proportional distribution of territory to guard against the danger of preponderance and hegemony.

This false conception was the cause of the great disorder which reigned, and still reigns, within the international society, from Charles V to the Treaty of Vienna in 1815 and even to the treaties of Algeciras and Morocco.

What events and struggles, how many treaties of alliance, concluded one day and torn to shreds the next, to establish that famous balance of power—the so-called political equilibrium!

The states have done nothing but watch each other to prevent preponderance and to resist the aggrandizement of either the one or the other, in the interest, always, of safeguarding the political balance.

The history of international law is the reflection of this false conception.

Poland was made the sacrificial offering to the political balance of Europe. In my own country, in order to counter-balance the success of the principles of nationalities, the union of Savoy and of the Comté de Nice with France was demanded and accomplished.

On your own continent, Napoleon III endeavored to counter-balance the growing power of the United States by founding in Mexico the ephemeral empire of Maximilian.

The success of Prussia in annexing the duchies of Schleswig-Holstein roused the anxiety of France, because the balance was thereby disturbed. M. Thiers sounded the alarm in the address he delivered before the legislative body, May 3, 1865. He said:

> We shall witness the creation of a new German empire. This empire of Charles V, which had its seat at Vienna, will now have its seat at Berlin. In defense of its own independence, in defense of the political balance of Europe which is in the interest of all, in the interest of universal society, France must resist.

Thus stands revealed the secret of European statesmanship; it explains the Franco-Prussian war, which was declared July 29, 1870; it explains subsequent events even to the time of the treaties of Algeciras and Morocco. Even in Turkey, a condition of things which brings honor neither to Christianity nor to civilization is being perpetuated in the fear of a general readjustment of the political balance, which would inevitably result from the partition of the Turkish possessions in Europe.

Without indulging further in historical memories, I believe I am correct in affirming that this false conception of considering the political balance as the guarantee and the palladium of the rights of the states, explains how it has happened that the juridical organization has remained absent in the international society.

This juridical organization has been absent and will continue absent, because—and in this gentlemen, I am sure we are of one mind—in viewing the political equilibrium as the corner-stone of the life of the states and the regulation of their relations, we shall never be able to place the sovereign authority of law on a sure foundation, nor to establish international relations on the basis of justice.

The subject of political balance lends itself to all imaginable equivocations; it leaves the door open to all manner of pretexts and pretensions.

In accepting the imperious necessity of maintaining the political balance as the fundamental basis of international relations, the most perfectly elaborated juridical rules cannot lead to clear and precise solutions.

The life of the states and the secret of their governmental policy may be summarized thus: some are attempting to acquire political preponderance in order that they may be held in higher respect by the remainder; others seek the counterweight deemed necessary to safeguard their own independence and security.

In these efforts all the states are, of necessity, compelled to rely upon their military forces and to seek alliances, some attempting to gain hegemony, and the rest seeking to establish a balance of power, in order to prevent the political preponderance of any one state; in this way the struggle has been accentuated by the policy of excessive armaments; more and more the taxes of the nations are absorbed by armaments thought necessary; and we are staggered when we stop to consider and realize the cost of armed peace.

According to Sundberg, in his *Apercus Statistiques Internationaux* (Stockholm, 1906), the expenditures for the land and sea forces of six great European Powers for the year 1906 amounted to five billion, nine hundred eighty million francs ($1,200,000,000). This enormous total has since considerably increased each year.

Let us consider what happened, only a month ago, at London, in the House of Commons. In order to maintain the balance between the fleets of Great Britain and Germany, each of which aspires to maritime preponderance, Lord Churchill proposed new expenditures in the budget of the admiralty to maintain the naval superiority of England over Germany; and in turn, the latter, having enacted a naval program, now proposes to construct additional vessels of the *Dreadnaught* type. The French budget, presented to the Chamber of Deputies on April 10th carries an increase of eighty million francs for national defense (*Courier des Etats-Unis,* April 11, 1912).

Gentlemen! The object of your Society is to further the establishment of international relations on the basis of right and justice. Now permit me to put some questions to you:

Do you believe that, in order to attain that purpose, we must seek the basis for international relations in the political balance of power?

Are we to admit that the balance of power can be found in the balance of military strength alone?

How shall we succeed in giving juridical organization to the international society?

According to my way of viewing the problem, whose solution forces itself upon our attention, to the end that order and justice may prevail in the international society, we must free our minds of the false idea that the balance of military forces is indispensable for the protection and the security of the states. On the other hand, however, we must admit the necessity of a juridical balance; we must assure its preponderance and establish the sovereign empire of law. To this end we must bring about the juridical organization of the international society by means of regulations that shall govern all the relations between the states, and between those who belong to the international society.

It will not suffice for the complete solution of the problem, that the states alone should agree upon certain regulations that are to govern their relations. For is the international society composed only of states! Will it suffice to regulate their mutual relations only? The great society of societies, which we call *Magna Civitas* is, in truth, composed of the states as formed in the course of historical events; but we have individual man also, with his personality and his rights; moral entities, such as the people, the nation; collectivities, such as churches, and independent tribes, organized in accordance with their respective laws; but all these are not states. There are also uncivilized hordes living in their own way, which, however, we cannot think of as being outside the pale of human rights. It is evident that international law is not applicable to these as it is to civilized states. But their relations must be subject to certain rules of international law, in order to eliminate the false idea that any violent act committed against them may be looked upon as permissible.

It follows from all these considerations that the law which shall govern the international society cannot concern the states alone. It must govern and protect at once the rights and duties of the states and of the individuals; of corporate bodies—moral entities in their relations with the states and between themselves, whenever these relations concern or may concern the international society.

In order to make myself clear, let me say, gentlemen, that man as man has an individual personality, and stands in relation to the sovereignty of the state to which he belongs. As a citizen he has his public rights, his political rights in relation to the sovereign power,

and the duties incurred by virtue of those rights. In relation to other individuals, his rights and duties are determined by the civil law of the state.

Now can it be said that in his relations with humanity man loses his personality, as a drop of water loses its entity in the ocean? Or shall we say that in those relations, which in virtue of his freedom and activity he may form with sovereign powers of the various countries of the world, and with individuals of any country whatever, he has not certain rights which he may ask to have respected? And if this cannot be reasonably affirmed, can we deny that international law must also govern the rights of human personality in its relations with all sovereign powers of the earth?

To whatever race he may belong, whatever his degree of culture, whatever his color, as long as man lives in political association, even in nomadic existence, he does not lose the rights of the human personality belonging to him in accordance with international law. He may everywhere demand respect, enjoyment and exercise of these rights, on condition that he acknowledge the authority of the land, and observe the legal provisions decreed by the legislature of the state where he may happen to be.

International law must, therefore, govern and protect the international rights of man: above all the inviolability of his person, by declaring the slave-trade illicit, under whatever form it may be carried on; by declaring personal property inviolate; by declaring the right of liberty of conscience; the right to elect citizenship in any state, to renounce acquired citizenship and to elect another by complying with the conditions imposed by the legislature.

These are the international rights of man.

Have not the people certain rights, which are independent of the state and sometimes in opposition to the rights of the sovereign power? Have they not the right to modify the political constitution of the state and to repel interference in their affairs on the part of a foreign government?

Shall not international law regulate also the position of the government constituted by the people in consequence of a revolution?

Have not the nations themselves their own rights?

Shall not international law also protect the formation of national states and regulate the relations of the populations of the same nationality desiring to organize politically into a state?

Within the *Magna Civitas* we find, moreover, associations formed in virtue of liberty of conscience: the churches. These, as corporate bodies living within the confines of the state, must be amenable to the public territorial law; while, as spiritual entities constituted by the bond of a common faith, the churches may insist upon their independence is so far as concerns their internal organization and the freedom of their beliefs. Shall not international law also safeguard the freedom of the churches in so far as they are spiritual associations, organized by virtue of liberty of religious confession?

Within the *Magna Civitas* we find other associations formed by clans, living in their own way by acknowledging the authority of their chief. Shall not international law concern itself with them also in order to safeguard respect for the human personality and prevent violation of the common rights of humanity? We cannot deny to civilized states the right to occupy territories from which savages can derive no profit; but it will be necessary to determine in what manner such occupation may take place, and by what means, in order not to trample under foot the personal rights of the natives. All these matters are part of the complete problem of colonizing protectorates and spheres of influence. All things may be justified by reasons founded upon moral, economic and political interests and for the noble object of advancing civilization.

But can it be affirmed that we have the right to force civilization upon barbarians at the point of the bayonet, treating them as if they were outside the pale of humanity? Does it not come also within the sphere of international law to prevent all forms of spoliation and arbitrary conquest? I am happy to find that the representative of the United States at the Berlin conference, Mr. John A. Kasson, took this view of this question, when, in the session of January 31, 1885, he expressed himself as follows:

> International law follows a line which leads resolutely to the recognition of the right of native races to dispose of themselves and of their hereditary territory as they may think best. In conformity with this principle, my government would willingly submit to a wider regulation, based upon a principle involving the voluntary consent of the natives whose territory is seized, in all cases where they may not have provoked the aggressive act.

From what I have just presented to you, gentlemen, there results this fact, that your Society, which proposes to promote the estab-

lishment of international relations on the basis of right and justice, has before it a rather wide sphere for its intellectual activity in behalf of humanity. In order to realize the juridical balance in the *Magna Civitas,* we must not confine ourselves to the doctrine of the rights of the states and the regulation of their relations. We must try to govern and protect the rights of everybody. We must determine exactly and without equivocation what each may do and must keep from doing; what is right and what is arbitrary in the attempt to regulate all questions according to the principles of justice. We must realize the juridical balance by admitting as a fundamental principle, that in the international society the individual can claim only such liberty as is compatible with the respect due to the rights belonging to all the rest.

Gentlemen, that is the problem to which you are to give all your thought if you are firmly resolved to advance the object of your society: to consolidate peace and to prevent war.

The complex question of the juridical organization of the international society can never be fully solved until we shall have determined the organs which are to proclaim the rules of common rights and to secure the necessary authority for their enforcement, and until we shall have established institutions clothed with the power to determine effectively all controversies between the states in accordance with the principles of justice.

I shall now proceed to give you my way of looking at this matter, by taking into consideration what has already been done, and what must be done—which I believe it will be useful to indicate, convinced at the same time that the measures I shall propose to that end cannot all be realized at once, but must extend over a more or less distant future. We believe that governments have entered into the right track; but it is a long road that we must follow, before we shall be able to realize what is in everybody's mind, that is, the establishment of the juridical organization of the international society.

The present is history. * * * The future must be the rational development of the historical fact. Now, gentlemen, what is this history and what is the real situation?

We must, of course, consider that up to the last century there were no institutions in existence and no juridical procedure efficient to guarantee the rights of the states, and that in consequence each of the states could find its security only in its military strength by which it could protect itself and obtain redress for every attempt made against

its rights and interests. Because of these conditions, each state found it necessary to organize large military forces to provide for its security and self-respect. Each state was compelled, moreover, continually to increase its military forces, to counterbalance the development of those of rival Powers.

Given to understand that in order to safeguard their national interests, it was necessary to rely on their military strength, and indispensable to counterbalance the military power of this or that other state, to prevent military preponderance, the people had to accept the inevitable. In all countries, therefore, expenditures for armaments have constantly increased. According to the statistical notes of Mr. Sundberg, these expenditures amounted in 1906 to one-fourth of the revenues; but no state could limit these expenditures, because no state thought itself sufficiently armed. The cost of militarism having developed into a crushing burden, a reaction took place, because of the inability of the state to maintain its military forces. It then happened that the people organized into associations, discussed the situation at congresses, and demanded that militarism be checked by substituting arbitration for war. The sentiment was voiced by every people and found response in parliaments.

To mention only a few of the important facts accomplished in your own country, I will recall to your minds that Mr. George Canning, called the Fénélon of the New World, addressed a memorial to Congress; that Mr. Blaine endorsed the same idea before the Pan American Congress; that Ladd and Thomson presented their propositions to the legislature of Massachusetts; that, on the motion of Mr. Boardman Smith, June 17, 1874, your two houses of Congress expressed their solemn judgment in these terms: "The people of the United States through the organ of their representatives in Congress, recommend the substitution of the arbitral tribunal for war."

In Europe such manifestations were no less emphatic nor less solemn. The people everywhere demanded limitation of armaments. The final result of this noble and humanitarian movement was The Hague Conference, which must be considered one of the greatest events of our times. Diplomacy had at last bowed to the people.

While proposing to find a remedy for the situation created by governmental policies, can it be said that The Hague Conference has succeeded in reaching the expected beneficent results? According to the program solemnly announced in the note of the Czar of August

12/24, 1898, the principal object of the Conference was "the maintenance of general peace and a possible reduction of excessive armaments." But, more than aught else, it was proposed to put an end to the progressive development of the actual armaments. It is painful to have to confess that none of the regulations codified are directed toward that noble goal; on the contrary, they relate primarily to war.

Gentlemen, I wish to call your especial attention to the regulations relating to the maintenance of general peace. They begin as follows: "With a view of obviating, *as far as possible* recourse to force in the relations between the States the signatory Powers agree to use their best efforts to insure the pacific settlement of international differences." (Article 1, Title I.) Note especially the words "as far as possible."

In regard to the efforts which they pledged themselves to make for peaceful settlement, the contracting Powers agreed, in so far as circumstances should permit, to have recourse to the good offices or to the mediation of one or several friendly Powers. (Article 2.)

The internatioanl commission of inquiry is referred to in Article 9, as follows:

> In disputes of an international nature, involving neither honor, nor vital interests, and arising from a difference of opinion on points of fact, the contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Let us pass to Title IV of the convention—International Arbitration.

Arbitration is recognized in a general way as the most efficient and at the same time the most equitable means of settling those controversies that can not be settled through diplomatic channels. (Article 38.) But notice how the obligation of substituting arbitration for war is regulated: "It would be *desirable* that, in disputes about the above-mentioned questions, the contracting Powers should, if the case arose, have recourse to arbitration, *in so far as circumstances will permit.*" (Article 38.)

In the matter of general arbitration treaties, the Powers reserved unto themselves the privilege of concluding such treaties for the pur-

pose of extending obligatory arbitration to all cases which *they may consider possible* to submit thereto. (Article 40.) In the numerous general arbitration treaties that have been entered into in consequence of this reservation, the obligation to submit to the arbitrators is subordinated to the condition that the question should not be one involving either the vital interests, the independence or the honor of the one or the other of the Powers to the controversy. Now, realizing that it is left to the parties to the controversy to determine whether or not the reservation is applicable to all the states, we see that the submission to arbitral jurisdiction has been left completely to the good faith of the parties themselves.

Gentlemen, I will ask if The Hague Peace Conferences that have codified the superb regulations for arbitration have met the hopes of the people, who demand that an end be put to excessive military forces by substituting arbitration for war? It being left entirely to the independent judgment of the parties interested to decide whether the question is one that can be peaceably settled by arbitration, or whether they shall have recourse to military force to settle it, have we succeeded, by the rules or arbitration, in eliminating war? Has the false conception been eradicated that the military power must ever be considered as the supreme guarantee of all right and protection? Has any one of the states that dream of attaining to hegemony and think its own view-point will under all circumstances prevail, ever renounce the right to have at its disposal the most highly trained armies and the most powerful war vessels, so that its right might triumph?

We regret to confess it, but the fact is that the problem has not been solved by the two Hague Conferences; that the disastrous situation has not been really changed; because we have not found the means by which we are to bring the progressive development of excessive armaments to an end. All the states, some of them in order to gain political preponderance, and others to insure their existence by means of the balance of power, increase their military forces in proportions hitherto unknown; they find themselves compelled to increase them and to that end they shrink from no sacrifice.

No; war has not been eliminated by the two Hague Conferences. War has sometimes been avoided, because those who might have been compelled to settled the controversy by the force of arms were not certain that they would be able to wage a victorious struggle! War

is, therefore, only postponed, because it is still necessary to prepare for war.

Gentlemen, this is history and the reality!

Bismarck, with his military spirit, while conversing with a journalist, de Houx, regarding the enormous expenditures for maintaining large permanent armies, said: "They are insurance premiums which the nations pay for the maintenance of peace." But this insurance premium which the populations have to pay—is it not a crushing burden? Gentlemen, can this be continued indefinitely? Military expenditures in our days increase at such a rate that it is not possible to foresee the day when the need for new armaments will stop. Science, which day by day perfects the agencies of attack, renders yesterday's defences obsolete. Sheer necessity demands continuous modification of the system of defense in order that the states may be able to oppose sufficient resistance to the agencies of attack, that are becoming ever more powerful. All the states are compelled to follow this fatal tendency which leads to the unceasing increase of expenditures, already devouring more than one-fourth of the revenues of each country. Can the remarkable resignation of the people in tolerating such a condition of things last indefinitely?

On the other hand, consider for a moment that complex and ominous question, which day by day, in all countries, grows more demonstrative: the so-called social question. It represents the undefined but unceasing movement on the part of the workingmen and the proletariat, clamoring for greater comfort and better treatment, greater development of the industries and commerce, so that they may more largely participate in the profit and be able to satisfy the increasing needs of life. The religious sentiment, which urged the people to tolerate privations and actual suffering in the hope of the life that is to come, has lost much of its strength and the proletariat and the working classes demand at once more comfort and more work. Will it be possible to satisfy the demands of these people and their urgent needs, if the states continue to spend the larger part of their revenues to constantly increase their armaments?

Gentlemen, there are but two ways out of the situation: Evolution or the fatal cataclysm, to which the Czar referred, in his note, when he said: "The mere thought of its horrors causes the human mind to shudder." If we are to avoid this cataclysm, the best means will be to assure to all the nations the benefits of a real and durable peace;

and first of all by stopping the progressive development of actual armaments. To this end all our efforts must be concentrated. For political preponderance must be substituted the permanence of law and of justice in international relations; the guarantee of all rights and honor must be realized, not by the military balance of power, but by the establishment of a set of juridical institutions capable of doing away with the disastrous necessity of an armed peace.

I much wish that this may result through evolution; and we may be certain of success if we are able to unite all the forces; first of all, by directing the efforts of the intellectual forces of all countries to the development of international law on the basis of justice; then through the press, which must develop the sentiment of justice in public opinion; and through the statesmen who must understand the imperious necessity of averting the calamities that are threatening the welfare of the civilized world. Everybody realizes that the development of public prosperity, of labor and commerce is paralyzed and retarded by the régime of excessive armaments and by the continual danger of economic crises, due mainly to the actual situation created by governmental policy.

The scholars of all lands must have full confidence in their powers, in the firm conviction that in the end the final dominion of the world belongs to the realm of thought and not of force.

Shall science, which has removed the false conception of the difference between classes, which has broken asunder the fetters of feudalism; which has established juridical rules for the family, the community, and the state; which through the legally constituted assembly has proclaimed to the world the inherent rights of man in relation to the king—shall science be ineffective, if it directs all its efforts to the purpose of proclaiming the inherent rights of nations and the juridical regulations for the organization of the international society?

Science, we know, has developed efficient institutions to safeguard the maintenance of order and the regular co-existence of the weak and the strong in civil life. Having been able to do that much, it should also be able to develop the means required to establish firmly the authority of law in the international society, and to compel it to be respected.

When through the press, the whole world shall have become impregnated with this reform spirit, diplomacy will then bow to the will

of the civilized populations, just as monarchs who thought themselves reigning by divine right, are now bowing to the will of the people and accept the crown from their hands.

The solution of the whole question can therefore be brought about by spreading throughout the world the just conception that might is not right; and that each state in the international society must be considered as the equal of the rest, in so far as respect for its individual rights is concerned. The whole world will have to come to the realization of the high conception of Charles Sumner who, on March 23, 1871, spoke as follows in the American Senate:

> The equality of all nations, without regard to population, size or power, is an axiom of international law, as the equality of all men is an axiom of our Declaration of Independence; nothing can be done to a small or weak nation that would not be done to a large or powerful nation, or that we would not allow to be done to ourselves.

All this, gentlemen, represents only the actual situation. The future, a more or less distant future, will develop the historical fact. As for myself, I have never lost faith in progress; and ever since the publication of my first work, *Nouveau Droit International Public,* which appeared in 1865, actual events have in many respects confirmed my judgment.

Even though you were to consider my ideas as fantastic, idealistic, or simply Utopian, when I myself know that they cannot at present be actually realized, you will, nevertheless, I am sure, permit me to tell you my thoughts upon the subject.

I look upon humanity as a composite of two great republics. One of these has neither territorial confines nor any boundary lines defined by the sea, the rivers or the mountains. It includes all the populations which, bound together by the bond of civilization and their collective interests, constitute the great society of societies that I call *Magna Civitas.*

The other is composed of those individuals who, bound together by their civil, economic, social and political interests, constitute the separate states.

Neither the one nor the other of these republics can exist without a real juridical organization. It would indeed be impossible to establish a regular co-existence of the individuals constituting the one and the other of the two republics, without the law which must govern all

their activities, all their reciprocal relations, and determine also what each individual has the right to do and what he is forbidden to do. It is moreover, necessary to insure the authority of the law by means of rational institutions outside the sphere of military power, capable of repressing all violation of law and of settling according to justice the controversies that may arise among the associated members.

Remembering that in the *Magna Civitas,* there are civilized and uncivilized states, it will in the first place be necessary to establish the organization of the society of civilized states. To bring this about, they should be requested to form themselves into a *union;* institute the necessary agencies for the promulgation of their common rights and see to their enforcement; and establish institutions invested with the power of insuring respect for the common right and to settle the disputes liable to arise.

Something has been done to that effect; but, as I have just said, not enough has been done finally to solve the problem of the juridical organization of the international society. It will be necessary to eliminate political preponderance in all things, and to insure the sovereign empire of right and justice. To bring that about, we must recognize the authority of a Congress to be looked upon as the legislative organ of the states forming the union. The constitution of this Congress should, however, be subject to such modification as might be thought advisable and necessary. This Congress should be composed of the representatives of the states actually forming the union, as well as all those that may wish in the future to join that union on the basis of perfect equality, without regard to population, size or power. Recognizing that the common law of the international society must not only govern the rights and the relations of the states, but safeguard as well the rights and the interests of all those belonging to the *Magna Civitas,* it is indispensable that even the people should be represented in the Congress. In order to render the representation effective and complete, it would therefore be necessary to admit delegates elected by the populations. I shall not enter into a detailed exposition of this idea. I would refer those who wish to acquaint themselves fully with it, to my work, *Droit International Codifié.*

In order to realize the juridical organization of the international society, it would, of course, be necessary that the common law should be enacted by the members thereof, and that, in order to eliminate political preponderance, all those forming the *Magna Civitas* should, ac-

cording to their respective needs, come to an agreement in regard to that law.

In my judgment, this Congress should not be a permanent body. It should meet at certain specified periods, and also in extra session on the initiative of one state, supported by two-thirds of the states in the union, through the medium of a note explaining the utility of the convocation. The changes occurring in the course of time may render the established regulations insufficient and their modification necessary.

I now pass over to the consideration of the other agency, which I describe as a kind of executive power, and in case of need, of judicial power as well. I call it Conference. We must consider it as an agency of high administration, not invested with the right to enact regulations, nor to modify the regulations already enacted by the Congress: but solely to insure their respect and enforcement to safeguard the maintenance of the juridical organization established by the Congress.

Thus, in order to give the most rational organization to the international society, there should be established not only an agency (The Congress) intended to elaborate and enact the laws, but still another agency that would see to their enforcement (The Conference).

The Conference should be composed of :

(a) Two representatives from among those delegated by the great Powers to the Congress:

(b) Five of the representatives elected by the people to the Congress, who shall be designated by the Congress by a majority vote, before the conclusion of its labors:

(c) Representatives of the state or of the states that have a direct and actual interest in the questions to be the subject of the deliberations of the Conference.

To justify this proposition, let me call your attention to the fact that the great Powers are more competent than the other states to prevent difficulties likely to arise from the non-observance of the laws enacted by the Congress. And this is our reason for declaring that the representatives of the great Powers, always on the basis of absolute equality, should constitute the Conference. Still further inspired by the idea of eliminating the preponderance of political influences from all international questions, the popular representation at the Conference, as well as the representation of the state or states interested, whose rights also must be taken into consideration, seems indispensable, even if the right to vote in the Conference be denied them.

In my judgment, the Conference must be looked upon as the most effective agency to prevent international controversies and to render arbitration efficacious. Without entering into great detail, permit me, gentlemen, to develop my idea. I have always looked upon arbitration as the most useful institution and the greatest agency of modern civilization, with the condition, however, that it be an effective instrumentality. To this end it is necessary on the one hand that submission to arbitration shall not be left to the discretion of the parties in controversy. On the other hand, it will be necessary, in regard to such international questions as cannot be referred to arbitrators to find the juridical means for settling them without resorting to armed strength. This shall be the high aim of the Conference. It shall be the duty of the Conference to make the arbitration efficient. In case one or the other of the parties interested shall refuse to submit to arbitration, declaring that the controversy does not come within the sphere of arbitration, it shall be the duty of the Conference to decide whether or not it must submit. If we continue to leave it to the parties themselves to decide according to their individual convenience, whether or no the question is one for submission to arbitration, to what condition will this noble institution of civilization be reduced?

Again, we must recognize that there are questions of a complex nature that are not susceptible of arbitration; for instance, questions that concern the political, economic, and moral life of the states, and the complex interests of the populations. Can the question of preponderance in the Balkans, or the pretensions to dominion along the Mediterranean be submitted to arbitrators? Can we submit to arbitrators conflicts regarding the aspirations for influence in Africa, in China, or in Persia? These are the great controversies that threaten peace and may lead to the general conflagration. And, gentlemen, to settle these matters, the Conference should be invested with judicial power. In such cases it should form a kind of arbitral tribunal, but of a high and superior order.

It will devolve upon the Conference to enforce the juridical rules enacted by the Congress to maintain the juridical balance and to prevent war.

What are the means by which the deliberations of the Conference may be executed? It shall be the duty of the Congress to determine these means. It shall be within its power to declare by what means peace shall be maintained and what coercive measures may be resorted

to, in time of peace, to compel each state to respect the common law; for instance, the peaceful blockade; interruption of diplomatic relations with the states that compose the union, etc., etc. To enter into a detailed consideration of these measures would lead too far. I merely state that the Conference might decree the coercive measures defined by the Congress to insure respect for the laws it has enacted.

In my work I have elaborated the sum total of the rules and procedure for the juridical organization of the international society and for the elimination of political preponderance. On this occasion I can do no more than outline in a general way my point of view, draw your attention to the wider study of the problem which is so complex and difficult, and arouse in its behalf the assistance of your intellectual forces, greater by far than my own.

I am grateful for the opportunity to address an American audience; for you are most advantageously situated to take the initiative in the formation of the union of the civilized states, and to esablish the juridical organization of their society.

The final result of the reform so greatly desired will be reached only in the distant future. The co-operation of all the forces is necessary for its accomplishment. In this country you have the noble tradition of democratic institutions. Therefore, you are rightly looked upon as the representative of the interests of democracy and the proletariat.

You have at your disposal financial means which your multimillionaires devote to the welfare of humanity. You are in position to bring about the union of the intellectual associations of all countries, with the purpose of realizing the union of civilized states. In addition you have the majestic conception of the union on the basis of liberty, autonomy and equality, which forms the foundation of your confederation. Your government has never been a factor in the question of political preponderance; but while always defending the independence of your country, your government has ever manifested a high regard for justice and humanity. And I am convinced that the President of the United States is so situated that he may lead in this movement.

To you, then, Americans, it belongs to realize the union of the civilized states, and to insure the supremacy of law and justice in behalf of the progress of civilization and of peace.

There is an expression, with which I close all my works; it reads:

"The family was the primitive unit of society; the union of the civilized nations shall be its last unit."

Americans! I solicit your best efforts for the realization of the union of the civilized states! In this way you can do the most good for humanity; and when the noble goal is reached, humanity shall then say: America has triumphed!

THE PRESIDENT. We will now listen to a paper by Mr. Everett P. Wheeler, of New York, on "The International Regulation of Ocean Travel."

ADDRESS OF HON. EVERETT P. WHEELER, OF NEW YORK,
on
THE INTERNATIONAL REGULATION OF OCEAN TRAVEL.

The Senate of the United States has just adopted the following resolution:

Resolved, That the President of the United States be, and he is hereby, advised that the Senate would favor treaties with England, France, Germany, and other maritime governments to regulate the course and speed of all vessels engaged in the carrying of passengers at sea, to determine the number of life-boats, rafts, searchlights, and wireless apparatus to be carried by such vessels, and to assure the use of such other equipment as shall be adequate to secure the safety of such vessels, passengers and crews.

This resolution naturally attracts the attention and calls for the consideration of the American Society of International Law. That law is in part the development of international usages which have, from time to time, come by general acquiescence to prevail among civilized nations. These usages are evidenced in the decisions of international tribunals and in the treatises of approved writers. Another source of international law is to be found in the treaties among nations which to a certain extent have codified, as it were, the law which prevailed before their adoption.

So far as these treaties deal with subjects of general importance and involve interests common to all nations, it is very desirable that they should be uniform. This uniformity can best be obtained by conference between representatives of different maritime nations, at which the delegates shall have ample opportunity to consider the subject in all its bearings and then report their conclusion for ratification by the Powers that sent them. Many such conferences, which have sometimes been called congresses, have been held. The one at The

Hague, in 1899, first made provision for the establishment of an international court of arbitration.

But long before this conference was held, there had been others in reference to maritime matters which had led to greater uniformity in maritime law. As the commerce between different countries increased, the number and size of vessels trading between them increased in a corresponding ratio. The speed and power of ocean steamers have increased in equal ratio, and these mighty vessels have almost entirely displaced the sailing vessels which carried almost all ocean commerce down to the year 1850. The risk of collision had increased in a corresponding ratio. Certain usages in reference to lights and signals had grown up in different countries. It is to the honor of the State of New York that one of the first acts of legislation prescribing lights and signals for the purpose of avoiding collision was adopted by that State in the year 1829. This act provided for the range lights, the forward white light lower, the after white light higher, which were required on all the waters of the State of New York for many years and were finally adopted by the International Maritime Conference of 1889. Before that time and in or about the year 1861 many maritime nations had regulated the lights and signals and precautions to be observed by ocean-bound vessels and these by common consent had become the law of the sea.[1] But experience showed that these regulations were in some respects deficient and the construction put upon them by the courts of different countries was to some extent diverse. Accordingly, by agreement of the great maritime nations, an international maritime conference was held at Washington in the year 1889. Many distinguished men familiar with the problems of navigation, some by experience in the navy, some by experience in merchant service and some as business men or maritime lawyers, took part in this conference. It revised the rules of navigation and the requirements as to lights and signals. The international rules as recommended by them were adopted by statute or by executive decree in all the principal maritime nations, and have become the law of the sea from that time to the present. They have removed many of the distressing conflicts of law which existed before their adoption and have undoubtedly been the means of saving many lives, the percentage of collisions has diminished, the percentage of lives lost in consequence of collision has also greatly diminished.

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[1] *The Scotia*, 14 Wallace, 170.

This conference also dealt with the subject of ocean lanes and with that of life-saving systems and devices. Commodore Maury, before the Civil War, had made a careful study of the ocean currents on the route between New York and Liverpool under the climatic conditions which prevailed at different seasons of the year and had recommended certain routes to be observed by ocean steamers plying between the United States on one side and British, French and German ports on the other side of the Atlantic. The great Civil War distracted attention from these recommendations. The subject was again taken up by Thomas Henry Ismay, who was one of the founders of the White Star Line, in a letter to the British Board of Trade on the 1st January, 1876. In this letter he called the attention of the Board of Trade to these recommendations of Commodore Maury, recommended them strongly for adoption as means of preventing collisions and avoiding danger from ice, and declared that he had required the steamers of the White Star Line sailing between New York and Liverpool to observe them. This recommendation was again taken up by the firm of Ismay, Imrie & Co., of which Mr. Ismay had been the senior partner, in a communication to the British Board of Trade, dated November 12, 1889. The result has been that these lanes have been adopted by all the trans-Atlantic lines.

At the conference of 1889,[2] the subject of the enforcement of the agreement as to these ocean lanes came under consideration and reference was made to the discussion which had taken place before the United States Naval Institute at Annapolis. In the course of this discussion Ensign Everett Hayden made the following statement:[3]

> The mails are given to the fastest vessels. One steamer may take a safer route, traverse a slightly longer distance and lose the mails. This very thing happened last year, when the *Werra* was beaten a few hours by the *Servia,* and Capt. Bussius complained that he had followed the route recommended and lost the mail in consequence. This question should therefore be carefully considered and postal regulations framed accordingly.

This statement of Mr. Hayden expresses very clearly one intrinsic difficulty which had been perceived at the time of the conference, that is to say, the want of a sanction to any voluntary agreement that might

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[2]Proceedings International Maritime Conference, 1889, Vol. 3, pp. 269, 270, 277.
[3]*Ibid.*, p. 278.

be entered into between the steamship companies. It also points out very clearly the disposition of the several governments to encourage speed in the ocean transit, even at the expense of safety. It is obvious that any effective regulation of this subject could only be secured by international agreement.

The next subject that was dealt with by this conference of 1889 was that of life-saving systems and devices. The report of the committee on that subject is in Vol. 3 of the Proceedings, p. 182. This contains a report to the British Board of Trade of a commission which had been appointed by the Crown to consider the subject of life-saving appliances. The chairman of this commission was Thomas Henry Ismay. May I stop for a moment to say that I have known many men who were prominent in the commercial world. I have never known one of keener and more comprehensive insight, more liberal views and more resolute determination to achieve the best results for the public than the elder Mr. Ismay.

The report of this commission was adopted by the British Board of Trade. It contains the following classification of ships and rules for the ships included in that classification, which are of especial interest at the present time:

CLASS 1.—DIVISION A [p. 195].

(a) Ships of this division shall carry boats *placed under davits*, having proper appliances for getting them into the water, in number and capacity not less than are given in the following table: * * *

Gross tonnage.	Minimum number of boats to be placed under davits.	Total minimum cubic contents of boats to be placed under davits. L. × B. × D. × 6.
1.	2.	3.
9000 and upwards.	14.	5250.
* * *	* * * *	* * * *

(f) If the boats placed under davits in accordance with the foregoing table do not furnish sufficient accommodation for all persons on board, then additional wood, metal, collapsible or other boats of approved description (whether placed under davits or otherwise) or approved life-rafts shall be carried.

Together they must provide at least "in the aggregate double the *minimum* cubic contents required by column 3 of that table."

But

(g) When ships are divided into efficient water-tight compartments, so that, with any two of them in free communication with the sea, the ship will remain afloat in moderate weather, they shall only be required to carry additional boats or life-rafts of one-half of the capacity required by paragraph (f) of these rules.

(h) There must be a life-buoy for each boat and a life belt for each person.

The principle of these rules was approved by the conference[4] and it recommended:

that the several governments adopt measures to secure compliance with this principle in regard to such boats and appliances for vessels of 150 tons and upwards, gross tonnage.

Unfortunately the several governments did not adopt these recommendations. A great diversity came to prevail in the equipment of ocean steamers belonging to different countries. Some nations were exacting, some were lax. The result was an unfair discrimination against the vessels of those countries which had adopted more stringent regulations. Unfortunately the traveling public does not appear ever to have attached importance to the existence of safety appliances upon ocean vessels. The percentage of deaths caused by accidents at sea has been so small that practically they have been considered negligible. I am sure there are many here who have listened to the Collect in the Episcopal liturgy in which the petition is for the preservation on the great deep and to be guarded from the dangers of the sea and have thought it somewhat superfluous. The recent dreadful disaster has shown that although these perils are much less frequent than they were when this Collect was composed, yet when they do occur they may be more deadly. It is therefore not difficult at this particular moment to convince our people that agreement on this subject between the commercial nations of the world is of great importance. Even if among the 2,167,115 passengers carried across the Atlantic during the year ending June 30, 1911, the loss of life was only 262 and the percentage of loss was therefore about one in eight thousand, still in the

[4] *Ibid.*, Vol. 2, pp. 1091, 1093.

aggregate the loss was serious. In the current year it has been terrible and we all agree that precautions must be taken as far as human skill and foresignt can extend to prevent it in the future.

Let it, however, be distinctly understood that the adoption of adequate precautions will cost money and will somewhat increase the length of the ocean voyage. Now in the time of our calamity is a suitable period to make good resolutions on the above subjects and to take prompt measures to carry these resolutions into effect. A year from now it is much to be feared the disaster to the *Titanic* will be forgotten by most people.

The difficulties that have been pointed out which have arisen from the want of international regulations on these subjects have not escaped national attention. Some attempt to cope with them was made by the British Parliament in 1906, in the Merchants Shipping Act of that year. (I quote from the introduction to the edition by Sanford D. Cole.)

Two leading ideas seem to be embodied in the Merchants Shipping Act. One is the adoption of the principle of enforcing regulations, which have safety for their object, against the ships of all nationalities trading to other ports. The freedom hitherto enjoyed by foreigners from the obligation of complying with the British rules already enforced against British ships will come to an end. The other leading idea is the improvement of the food and conditions of service of the British sailor.

The safety regulations which were applied to foreign ships by this Act are those relating to load line, detention when ship is unsafe owing to defective equipment, shifting of grain cargoes and carrying of life-saving appliances.

All these subjects ought to be dealt with by international regulations. Vessels which pass from the ports of one nation to those of another cannot comply with the rules of all when these differ. They are certain to differ unless harmonized by treaty. And experience shows that such treaties can most wisely be framed after full consideration at an international conference.

Another subject that has been considered at the Third International Conference on Maritime Law is that of salvage. The ratification of the salvage treaty was consented to by the Senate January 18, 1912.[5]

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[5]The text of the convention is in Vol. 4, American Journal of International Law; supp. p. 126.

But unfortunately this conference did not go far enough in reference to the important subject of compensation for saving life at sea. By the ancient maritime law salvage compensation for the saving of life at sea, unconnected with the saving of property, was not allowed. This is still, I regret to say, the law of the United States, although it is true that our courts will grant more liberal compensation for the saving of property when it is accompanied by the saving of life. This was so held by Judge Ware in the *Emblem*,[6] in 1840, and by Judge Benedict in the *George W. Clyde*,[7] in 1897.

The case of the *Emblem* is a remarkable illustration of the growth of the spirit of humanity during the last sixty years. The *Emblem* was a schooner that was dismasted and thrown on her beam ends in a storm. She drifted for five days, was passed by twenty-three vessels, no one of which went to her relief. Finally one vessel did succor her. Alas! all her crew died of exposure. The captain's wife alone survived.

The British Parliament made some provision by statute for the amendment of the law of salvage in this particular. The first enactment proved inadequate. The British Merchants Shipping Act of 1894[8] authorized the court to award salvage compensation for saving life from a foreign vessel if "the services are rendered wholly or in part within British waters," and for saving life from a British vessel wherever the services were rendered. If it had not been for this act the *Carpathia* would have had no right to compensation for saving the lives of the ship-wrecked survivors of the *Titanic*.

That great admiralty lawyer, Sir Francis Joune, held in the *Pacific*[9] that a British vessel was entitled to compensation for saving the passengers and crew of a Norwegian ship that had been wrecked on the high seas, on the ground that they were brought into England by these salvors. The British Parliament did not think itself justified in extending to foreign vessels the liberal rule it applied to British ships unless the service was partly rendered in British waters.

It is reserved for international agreement to extend this beneficent principle to the commerce of all nations.

The Brussels Convention, just ratified (Article 2), restricts the sum

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[6] 2 Ware Rep., 61.
[7] 80 Fed. Rep., 157.
[8] Section 544, subs. 1.
[9] (1898) Prob. 170.

paid for salvage compensation to "the value of the things saved." Article 9 does make the following provision in favor of life-savers:

> Savers of human lives who have participated in the same dangers shall be entitled to a fair share of the remuneration granted to the rescuers of the vessel, the cargo, and their accessories.

This is no more than Judge Ware, in the United States District Court for Maine, did in 1840. I submit that the nations should now go farther, and adopt the more liberal English rule, and extend it so as to apply to the vessels of every nation. Surely a common carrier who has engaged a crew, or received compensation for the transportation of passengers should be liable *in persona* for just compensation for saving the lives of those who have thus entered its service or entrusted themselves to its care.

Article 11 of this same convention provides as follows:

> Every master shall be obliged, so far as he can do so without serious danger to his vessel, his crew or his passengers, to lend assistance to any person, even an enemy, found at sea in danger of perishing.

It seems to me that if there be this duty, as we all agree, and as this nation has now enacted, there should be a corresponding reward.

I have made no attempt in this paper to deal in detail with the various requirements which different nations have already adopted for the security of those who voyage on the great deep. My purpose is accomplished if I have impressed the necessity of international regulation and the importance of immediate attention to the subject. It may well be assigned as one of the principal topics for consideration at the International Conference at The Hague.

And now in conclusion may I say just one personal word.

There was one of those who went down with that great steamer, the *Titanic,* whom I knew intimately and loved dearly. He was one of those loyal Democrats who stood by Grover Cleveland in all his campaign for tariff reform and for sound money during both his administrations. That was Isidor Straus. High-minded, courageous, faithful to his conceptions of duty as any man I ever knew. I am convinced that if he could have felt that through his death there might be an amelioration in the requirements for the navigation and equipment of steamers, if he could have felt that his death would so stimulate the conscience of the nations as to lead them to an

international agreement on these subjects, he would have given his life willingly. And so I would use, if I might, for his epitaph, the words of that Great Hebrew statesman and man of affairs, who was also a prophet, as in my opinion all really great men are:

"They that be wise shall shine as the stars in the firmament, and they that turn many to righteousness, as the stars forever and ever."

The PRESIDENT. The next session of the Society will be held in this hall to-morrow morning at ten o'clock, until which time we now stand adjourned.

SECOND SESSION.

FRIDAY, APRIL 26, 1912, 10 O'CLOCK, A. M.

The Society was called to order at 10.30 o'clock a. m. President Harry Pratt Judson, of the University of Chicago, in the chair.

The CHAIRMAN. The paper by Mr. Straus, which was not read last night, entitled "The Humanitarian Diplomacy of the United States," will now be read by the Secretary, Mr. Scott.

Mr. SCOTT. Mr. Straus had intended to be present to read his paper himself and to speak at the banquet to-morrow night; but the awful accident to the *Titanic,* and the loss of his revered brother, have prevented him from appearing in person to-day, and he has asked me to read his paper, which I now proceed to do.

(The paper referred to was thereupon read by the Secretary.)

ADDRESS OF HONORABLE OSCAR S. STRAUS
on
HUMANITARIAN DIPLOMACY OF THE UNITED STATES.

As the nations come into closer contact by reason of the rapidity of inter-communication and the growth of international interests, political and commercial, the meaning of the phrase "family of nations" assumes a more real significance, and the welfare of each in a progressing degree is bound up with the welfare of all. "World politics" exerts more and more influence and control over the relations of nations. Independence in international law signifies that each sovereign state has complete liberty to manage its affairs externally and internally, as it may wish. While this is the general theory, as a matter of fact international relations are primarily controlled by national interests modified by the collective obligations of each nation to all the others; national independence, like personal liberty, is not in fact unrestricted, but a right or condition modified and limited by the rights and inter-

ests of other independent states. The highest law of nations is self-preservation, and in order to protect and conserve its national entity, a state is justified to go to war, and as the greater includes the lesser, under such circumstances to intervene in the affairs of other states to control their external as well as the internal affairs of such other states, if its own sovereignty is menaced, or its vital interests jeopardized. This intervention may take many forms, and has varying degrees. In its extreme form it implies the ultimate and even the immediate use of force, dependent upon circumstances. It may be mandatory or dictatorial. In its lesser forms it assumes the right to interfere with the action of another state, be that action within the state itself or in its relations with other states. A distinction is drawn, and properly so, between intervention,—or dictatorial interference in the relations of other states, or in the domestic affairs of another state contrary to its will,—and the right of intercession, to protest against action or contemplated action, to make a tender of good offices, to act as mediator, to express sympathy for the suffering, et cetera. In fact, the chief function of diplomacy is by timely protest, by mediation, or by the tender of good offices, and by the exercise of those functions which, for the lack of a better term, may be called diplomatic as distinguished from mandatory or dictatorial intervention, to prevent a condition which, if not checked or adjusted, might provoke serious international irritation and possibly induce active intervention and war. The grounds for intervention depend upon circumstances and upon international interests and upon the enlightened public opinion of the civilized world. In other words, intervention is by right when it is necessary for self-preservation, and secondarily since the rise of the European "balance of power" devised to prevent and hold in check the preponderance of any single Power, it is agreed by the public law of European states, that the right of intervention exists to maintain this status. As distinguished from intervention by right, there are instances where intervention is justified by the enlightened sentiment of the civilized world. Under this head may be classified the interventions for the preservation of the Ottoman Empire, or to prevent its dismemberment in the interest of separate groups of European Powers.

There is another class of causes where intervention is not recognized as strictly an international right, but where it is justified "by a high act of policy above and beyond the domain of law,"[1] especially

[1]Historicus, *Letters on Some Questions of International Law.*

if such intervention is free from the suspicion of self-interest and is not used as a cloak for national ambition, but undertaken solely and singly in the interest of humanity for the purpose of ending revolting barbarities, inhuman oppressions or religious persecutions. The object of this paper is to review so much of the diplomatic history of the United States which directly concerns questions of humanity where our government has made remonstrances, formulated its protests, or appealed to enlightened public opinion in the interest of humanity, to put an end to oppression and religious persecutions. No nation has from its foundation on frequent occasions taken a more positive stand upon the principle of non-intervention, than the United States. This principle was developed into a policy by Washington, notwithstanding our alliance with France, and was emphasized in his Farewell Address. Yet no nation has stood more firmly upon the right of expatriation and the protection of its citizens, native-born and naturalized, in foreign lands, than our own, which protection has again and again been exercised on behalf of naturalized citizens who, on their return to the country of origin, have been subjected to pains and penalties imposed chiefly because they had emigrated and become naturalized in the country of their adoption, without first obtaining the consent of their country of origin. From the many definitions of our statesmen since Jefferson expounded the American doctrine of citizenship and expatriation, I quote that of Attorney-General Caleb Cushing, in an opinion given in 1873, wherein he said:

> The people of the United States are composed of emigrants from Europe, most of whom expatriated themselves in order to escape from oppression, or, if you please, legal impediments to personal action in countries of their birth, and many of whom were the actors and victims of revolutions or of civil wars. * * * The doctrine of absolute and perpetual allegiance—the root of the denial of any right of emigration—is inadmissible in the United States. It was a matter involved in and settled for us by the Revolution which founded the American Union.[2]

In 1859 Mr. Cass, the Secretary of State, in his instruction to our Minister to Prussia, said: "The moment a foreigner becomes naturalized, his allegiance to his native country becomes severed forever. He experiences a new political birth. * * * Should he return to his native country, he returns as an American citizen and in no other char-

[2]Foreign Relations, 1873. Part II, 1353.

acter." The American doctrine of expatriation was greatly strengthened and expressly adopted by the conclusion of naturalization treaties with the leading European nations beginning with the Bancroft treaties of 1868 with the North German Union. This was followed by the Act of Congress of July 27, 1868 (Revised Statutes §§ 1999, 2000, 2001), by which the right of expatriation was declared to be an inherent right of all people, and that naturalized citizens of the United States should while abroad be entitled to receive the same protection of person and property as is accorded to native-born citizens. It was further declared that whenever any citizen was unjustly deprived of his liberty under the authority of any foreign government, it should be the President's duty forthwith to demand of such government the reasons for the imprisonment, and if it appeared to be wrongful and in violation of the rights of American citizenship, forthwith to demand the release of such citizen, and, if the release was unreasonably delayed or refused, to use such means not amounting to acts of war, as might be necessary and proper to obtain such release and then to communicate all the facts and proceedings to Congress.

This American doctrine of expatriation, coupled with our liberal laws of naturalization, under which we freely received the emigrants from other countries, incorporated them into our body politic and endowed them with the rights of citizenship, naturally had the effect of more directly arousing our sympathetic interest for the oppressed, especially in such lands from which refugees have come, and to which after naturalization they returned, attracted by the suffering of relatives and friends, frequently becoming involved in revolution or in efforts to ameliorate conditions, and thereby bringing us into direct relations with political and religious oppression in countries where such unfortunate conditions prevail. The diplomacy of humanity to a large extent growing out of such and similar circumstances, has made a stronger appeal to our sympathies and had a wider application in our relations than in the foreign relations of other countries. Another class of cases grow out of the fact that a number of the leading American Protestant denominations have for some seventy years past maintained in Oriental countries religious, medical and educational missions, and by reason of their work and sympathy for their converts, become involved in the chronic disorders in such lands and have to appeal to their government for protection and redress for the loss of life and destruction of property, so that on numerous occasions, when

diplomacy failed, protection and redress could only be obtained by the display of naval force.

Upon the strict legalistic principles it is very doubtful whether humanitarian intervention can be justified, but international relations are not wholly controlled by the principles of law. A large element of the popular conscience at times enter into those relations and shape the action of states. Hall says:

> The opinions of modern international jurists who touch upon humanitarian intervention are very various and for the most part the treatment which the subject receives from them is merely fragmentary, notice being taken of some only of its grounds, which are usually approved or disapproved of without very clear reference to a general principle.[3]

One of the earliest incidents in our diplomatic relations which appealed to the classic imagination and humanitarian sympathies of our people was the war of the Greeks for independence from the Turkish yoke. Resolutions of sympathy and for aid were presented by Members of Congress from Massachusetts and New York on behalf of committees of citizens from those States, but the House took no action thereon. President Monroe in his annual message of December 3, 1822, expressed the hope that the Greeks would recover their independence, and referred to the sympathy in their favor throughout the country. Similar reference was made in his annual message the following year. John Quincy Adams, in his annual message of 1825, referred to our sympathy in their war, and hoped for their success, and in his annual message of 1827, he informed Congress that "the sympathies which the people and Government of the United States have so warmly indulged with their cause have been acknowledged by their government in a letter of thanks."

The next notable instance which made an appeal to the humanitarian sympathies and liberty-loving sentiments of the people of the United States grew out of the Hungarian Revolution of 1848 and commiseration for Kossuth and his associates, who having escaped to Turkey, were held in captivity there. On the 3d of March, 1851, both Houses of Congress passed a resolution requesting the President to authorize the employment of a public vessel to convey the captive refugees to this country. President Fillmore, in his annual message, re-

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[3]Hall, 3rd edition, p. 288, note.

ferring to the grateful acknowledgments Governor Kossuth had expressed for our government's interposition on behalf of himself and his associates, stated that "this country has been justly regarded as a safe asylum for those whom political events have exiled from their own homes in Europe," and recommended to Congress to consider in what manner Kossuth and his compatriots brought here by its authority should be received and treated. On Kossuth's arrival, he was presented by Mr. Webster, the Secretary of State, to the President and was received by the Senate and the House, and afterwards he was officially entertained at the Executive Mansion and banqueted by the House. It was soon made apparent that Kossuth's purpose in coming here was to induce our government to give its moral and material aid to renew the struggle for Hungarian independence, though Mr. Webster and the President made it clear that our government would not depart from the traditional policy of not interfering in the affairs of other nations. Notwithstanding our refusal to meet the hopes and wishes of the Hungarian patriot, whose masterly oratory and picturesque appearance aroused the admiration and enthusiasm of many of our most prominent men, the hope for Hungarian independence so offended the Austrian *Chargé,* Hülsemann, that he addressed a note to Secretary Webster protesting against the honors shown to Kossuth by our government and its citizens, and especially against the latter's speech at the Congressional banquet. To this Webster made no reply, and thereupon the *Chargé* laid his protest before the President, whereupon he was informed by the Secretary of State that the government would hold no further personal intercourse with him, and that he must confine himself to written communications. In answer to this notice he addressed a note to Secretary Webster stating that his government would not permit him to remain here longer "to continue in official intercourse with the principal promoters of the much-to-be-lamented Kossuth episode."

One would search in vain the records of the world's history to find a more striking example of a war undertaken by any nation from motives more singularly humane and free from selfish interests and purposes than our war with Spain. President McKinley in his special message to Congress of April 11, 1898, after reviewing the insurrections and revolutions in the island against the dominion of Spain during the past fifty years, and recounting the cruelties and barbarities which shocked the sensibilities and offended the humane sympa-

thies of our people, recommended our forcible intervention as a neutral to stop the war "according to the large dictates of humanity." The grounds set forth by him justifying such intervention were summarized, the first and main one being, to quote his words: "In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate." Congress in its joint resolutions which authorized the war, after referring to the humane considerations that prompted them, expressly disclaimed any intention or purpose to exercise any other power or control in Cuba except for pacification, and when this was accomplished, to leave the government and control of the island to the people therein. Subsequent events have accentuated and verified in every respect the unselfish purposes and humane motives which prompted our government and people in the making of the war.

Our humane diplomacy in the past sixty years has many times been extended in all Mohammedan countries, as well as in China and Japan, for the protection of our missionaries, and the good offices of our consular and diplomatic officials employed in behalf of converts and other native Christians. Such good offices, when tendered, were not exercised as a right but in the interest of humanity and to preserve good relations. We have, however, refrained from going to the length of the European Powers, who, by a system of *protégés,* extend their protection even to natives of such countries in the interest of commerce as well as humanity.

No class of people have been compelled more often to invoke the humanitarian diplomacy of civilized states than the Jews, because no people have, since time immemorial, by reason of race hatred and religious persecution, suffered as they have from inhumanity and oppression in every form and degree. The aid of our government has been more directly appealed to than that of other governments in recent years, by reason of the large immigration of refugees driven hither by restrictive measures, oppressions, and massacres in Roumania and Russia. President Harrison, in his annual message, December 9, 1891, referring to remonstrances made by our government to Russia because of the harsh measures known as the May Laws, being enforced against the Jews, said:

> The banishment, whether by direct decree or by not less certain indirect methods, of so large a number of men and women is not a local

question. A decree to leave one country is, in the nature of things, an order to enter another—some other. This consideration as well as the the suggestions of humanity, furnish ample ground for the remonstrances which we have presented to Russia.

President Roosevelt, in his annual message of December 4, 1904, referring to the remonstrances of our government by reason of the massacres in Kishinef and in a hundred other cities and towns in Russia, which so shocked the enlightened sentiment of the world, said:

Nevertheless there are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it. The case must be extreme in which such a course is justifiable. * * * The cases in which we could interfere by force of arms, as we interfered to put a stop to the intolerable conditions in Cuba, are necessarily very few. Yet it is not to be expected that a people like ours, which in spite of certain very obvious shortcomings, nevertheless as a whole shows by its consistent practice its belief in the principles of civil and religious liberty and of orderly freedom, a people among whom even the worst crime, like the crime of lynching, is never more than spasmodic, so that individuals and not classes are molested in their fundamental rights—it is inevitable that such a nation should desire eagerly to give expression to its horror on an occasion like that of the massacre of the Jews in Kishenef, or when it witnesses such systematic and long-extended cruelty and oppression as the cruelty and oppression of which the Armenians have been the victims and which have won for them the indignant pity of the civilized world.

The Treaty of Berlin of 1878, which followed the Russo-Turkish War of the preceding year, had for its object the adjustment of the relations of the Balkan States, to free them from the Turkish yoke and at the same time restore the European balance. This treaty not only expressly recognized, but materially advanced the right of intervention in the internal affairs of other states and provided for extensive guarantees of a humanitarian nature. The independence of Montenegro, Servia, Bulgaria and Roumania were recognized by the great Powers upon the express condition that there should be no religious discriminations, that all of the subjects of the several states should be guaranteed the enjoyment of their civil and political rights, and that the citizens and subjects of foreign Powers should be treated without distinction of creed on a footing of perfect equality.

The persecutions of the Jews in Roumania in 1892, and the large influx of impoverished refugees to our shores, shocked the enlightened sense and aroused the humanitarian sentiments of our people. Secretary Hay took up the subject in his inimitable and masterly style. He addressed an instruction to our minister to Roumania, for communication to that government and at the same time forwarded it to our ambassadors to the several signatory Powers to the Treaty of Berlin, with instructions to bring it to the attention of the governments concerned, with the hope that such Powers may take such measures as to induce the Government of Roumania to reconsider its oppressive measures and restrictive laws. After reciting the wrongs which the Jews were made to suffer, so repugnant to the moral sense of our enlightened age, he adds:

This government can not be a tacit party to such an international wrong. It is constrained to protest against the treatment to which the Jews of Roumania are subjected, not alone because it has unimpeachable grounds to remonstrate against the resultant injury to itself, but in the name of humanity. The United States may not authoritatively appeal to the stipulations of the Treaty of Berlin, to which it was not and can not become a signatory, but it does earnestly appeal to the principles consigned therein because they are the principles of international law and eternal justice, advocating the broad toleration which that solemn compact enjoins, and standing ready to lend its moral support to the fulfillment thereof by its consignatories, for the act of Roumania itself has effectively joined the United States to them as an interested party in this regard.

The diplomacy of humanity, which has had so large a place in the foreign relations of our country, has had its employment immeasurably facilitated, though not in direct terms, yet in the spirit of the provisions for the tender of "good offices or mediation" of the Hague Convention for the Pacific Settlement of International Disputes. These provisions, recognizing the closer ties uniting the family of nations, reversed their attitude from that of hostility to friendly reception of that form of intervention which comes under the above designation, by providing: "The exercise of this right [the offer of good offices or mediation] can never be regarded by either of the parties in dispute as an unfriendly act."

The enlightened sense of the world is the basis of international morality, and as that sense finds freer expression with the growth of public opinion and of parliamentary institutions, the forces of civili-

zation in every land will supplant more and more the doctrine of expediency in international relations by the principles of morality and humanity, founded upon justice and righteousness.

The CHAIRMAN. The paper which has just been read, was to be the last paper last evening, and last evening's program is therefore now completed and is now open for discussion. Is there anything to be said on the subject of this paper?

Mr. WHEELER. Mr. President, I should like to be permitted to say one word in regard to the diplomatic history of the author of the paper that has just been read. I happen to know something in this regard, because I was on the committee charged with the consideration of the subject. No minister we have ever had in Constantinople has done so much to enforce the principles of justice which are advocated in that paper as Mr. Straus; and I happen to know that we have never had a minister there, whose conduct and whose activity were more satisfactory to the American citizens who have sent missionaries to Turkey for medical, for educational, or for religious teachings, than Mr. Straus. By the greatest tact and the greatest fairness, without any discrimination for or against any organization, he exerted himself to the utmost to maintain and to secure the rights which have been guaranteed by treaties to citizens of the United States.

Mr. ION. Mr. Chairman, I would like to refer for a moment to the subject of the last paper presented by the famous writer, Professor Fiore, and ask if I may be permitted to put to him one question. He told us last evening that there should be a union of civilized states. The question I desire to ask is, what are civilized states? Who is going to define what constitutes a civilized state? What will be the criterion of a civilized state? So far as we know, there are a good many states that are not civilized, according to our own conception, and yet are members of the family of nations.

If you will allow me, I will put the question to him in French.

(The question was put and Professor Fiore answered in French.)

The CHAIRMAN. We have with us Mr. Lange, the Delegate from Norway, and Secretary-General of the Interparliamentary Union. I will ask him to give a brief summary of the reply of Professor Fiore.

Mr. LANGE. I am rather taken by suprise at this request. My friend Dr. Scott, asked me to give a brief summary of what Professor. Fiore said, but I am frank to say that I can give only a very crude account of what has been said by so eminent a gentlemen in so eloquent an address.

He began by stating that it was quite true it would be impossible to draw a strict line of demarcation between civilized and uncivilized nations, and that therefore he was unable to answer the question definitely; but, on the other hand, he thought it would be possible to develop an idea as to what should be considered a country of civilization—of European or American civilization. He very strongly accentuated the idea that, according to his view of international law, not only civilized countries were entitled to rights in the society of nations, but also populations without a strictly political organization. He said that even now some nations and some states are on an imperfect footing within the society of nations, and cited as examples different oriental countries which could not be considered as altogether civilized, citing as an illustration the situation of affairs in Japan several years ago, but he said that now no one would deny to Japan the rights of a fully civilized country.

Professor Fiore thought that with the progressive evolution of civilization and of international law it would be possible to arrive at the organization which he had in view.

If I may be permitted, I would like, since I am now speaking, to add a few words of my own in relation to the same subject. Of course, I think the idea of a union of states or a union of nations is the great idea to which we are all tending; and it is of great service always to put ideals before the eyes of the workers and speakers in the great cause of international right and international peace. On the other hand, I am afraid that this ideal is still a long way off. There are however, other things nearer at hand in the same line of evolution, to which our work could be put to great use. I would like to say, in connection with what Senator Fiore said to you with reference to the rights of unorganized nationalities, a word in favor of the notion which does not yet, except in an imperfect way, belong to present international law. There is no doubt about it that there are nations now without political organization which are not fit to govern themselves, and which by inordinate conduct may destroy not only their own future, but also the present state of humanity at large.

I think that the right thing to do would be to create and try to develop a sort of international procedure by which the union of the states, as an actual fact, might be accomplished. It is not now very difficult to say which states are considered to be civilized states. They are the states represented at The Hague Conference, and there are from 44 to 46 of them. There might be a common authority established to exercise a tutelage over states and even nationalities, so that they might be educated to take care of themselves.

I now remember what I should have said in giving a summary of Professor Fiore's speech, that he stated that there was an analogy between states and individuals. For instance, the individual was supposed to arrive at his majority at 21 years of age, and then was able to take care of himself; but we all know that there are persons over 21 who are not able to take care of themselves and who are therefore put under tutelage. It is just the same with states. Individuals are put under the authority of an official in an official way, and it should be the same with states and nationalities which are not able to govern themselves. I think that is an idea to be developed within international law, and it would be a preparation for this union of civilized states which I hope will come, if some definite rights were given to a common authority.

The CHAIRMAN. Is there any further discussion of this paper?

Professor ION. When I asked the question of Senator Fiore, I had in mind the present family of nations in Europe. We all know that there are nations in Europe, and some not in Europe, which are members of the family of nations, but are not civilized. For instance, in 1856, Turkey, for certain political reasons, was admitted into the family of nations, and we all know what happened. We remember the massacres that were committed by the Turks in Turkey, and we know that Turkey was not, at the time, ready to be admitted as a member of the family of nations. There is also a danger on account of the political interests of European Powers to demand the admission of various states, which are not civilized, into membership in the family of nations.

Mr. MARBURG. Mr. Chairman, the discussion which has developed this morning is one of the highest importance; it is of as much im-

portance as any topic that is likely to come up in the course of this session. This idea which Drs. Fiore and Lange have discussed so admirably is one which, instead of interfering with the independence of countries, is likely to preserve that independence.

To give an illustration: The United States went into Cuba and liberated it from Spain. It administered Cuba for the time being, and then withdrew, thinking that the Cuban people were able to govern themselves. In this hope it was disappointed. It entered Cuba a second time and administered the island until the people showed a disposition to hear and respect the voice of the people at the polls, until, in other words, there was established a practical and an orderly government. Here was a self-denying act, an act of very great self-restraint. Can we expect many nations to act thus, or can we count upon doing it ourselves again, when the temptations may be greater and when it may concern some contiguous territory such as Mexico?

If, in a case like that, you have a group of Powers that can intervene or can delegate one Power to intervene on behalf of the others, you have a situation where the temptation to remain is very much less than it is under present conditions. In the case of Cuba to which I have just referred, the United States, if we had had such an institution, would have acted under the mandate of the Powers.

Another thing. We cannot stop the expansion of race. Unless some institution is provided such as that here proposed, an institution by which the expansion of race can go forward peacefully, you will have the expansion of race by force, which will mean the continued conquest and absorption of the smaller countries.

Mr. WHELESS. Mr. Chairman, it is with no little diffidence that I arise in this distinguished assemblage to make a few remarks which I hope may not be considered inappropriate, but which appear to me to be pertinent to the objects and purposes of this gathering, and to which I am impelled by the remarks of the gentleman (Mr. Ion) who has just hinted at armed intervention by one American nation in the political affairs of another, a member with us of the Pan-American Union.

We are gathered here in a peculiarly interesting place—we stand, as it were, upon holy ground. We sit here in a temple erected to American fraternity and dedicated to Pan-American peace; the shrine of an institution founded to promote harmony among the great family of American republics, co-members of this Union of all the Americas.

The gentleman who has just spoken has made reference to intervention by the United States in the affairs of Cuba and of Mexico. The paper which we have just heard read, prepared by Mr. Straus, has dwelt upon the humanitarian diplomacy of the United States, but has, too, pointed out the occasions in which intervention would, he says, be justified on the grounds which he has indicated.

I want, in a few brief words, to declare my attitude on this serious subject. There has been of late a great deal of talk in the newspapers and even in diplomatic journals, in regard to the possibility and the justification of intervetnion on the part of the United States in the affairs of the Republic of Mexico, and it now finds voice in this audience. I feel an interest in that matter, and I speak feelingly as I think of such an act and of its inevitable consequences. I am a good deal at home in Mexico, as I spend about half of my time there. I am a friend of Mexico. I am in hearty accord with the purposes of this organization; and I believe in the principles upon which the Pan-American Union has been founded; and here in this beautiful home of the Pan-American Union, I want to raise my voice energetically and positively against any sort of intervention on the part of the United States in Mexico.

It has been often said by some whose opinion is of weight among us, and who are honestly patriotic than blindly partisan, that the former American intervention in Mexico was a great wrong on the part of the United States. This is not the occasion to enter into such a now academic discussion; but I do say that another intervention in Mexico by the United States, under the existing circumstances, unfortunate and disagreeable as they are, would not only be a most egregious blunder, but, in my opinion, would be an outrageous crime against the very principles for which this society stands—fraternity and harmony among the sister Republics of the Pan-American Union of nations.

I have just returned from a three months' trip in Mexico, and am now on my way there again. There are, to my knowledge, no circumstances now existent which would, for one moment, justify a violation of the principles for which this Society and this Union exist. It would be abhorrent not only to the general principle of the promotion of peace throughout the world for which we earnestly stand, but it would be particularly abhorrent to every devotee of the principles for which this Pan-American temple stands here—peace and fraternal love among the American Republics.

There are two considerations which signally emphasize what I seek to express. In the first place, intervention in Mexico means war, and war would be a violation of that principle of universal peace which we preach and for which we strive through this and so many organizations. And particularly a war with Mexico would also be a flagrant breach of, and a suicidal violence to, the especial principles of fraternity, goodfellowship and peace among the American Republics, for which the Pan-American Union was conceived and to-day exists; and as its immediate and lasting result, such act would in an instant shatter, like a bomb-shell, the very corner-stone of this beautiful temple, and bring down its resounding ruins upon our impious heads, making a mockery and a reproach of the very professions of peace and fraternal love upon which its foundations are laid and its beautiful structure reared. War with Mexico, and the Latin-American nations would pronounce anathema on their Anglo-Saxon neighbor and erstwhile great and good friend, and this magnificent monument to the Pan-American Union would become the lair of the lion and the lizard even as the golden Palace of Jamshid.

Therefore, I wish to say, and I wish it might be the sentiment of every member of this organization of international law, that we should stand resolutely against any attempt on the part of the United States to intervene in the affairs of our sister republic, the leader of the Latin-American countries of our continents—Mexico.

The CHAIRMAN. If there is no further discussion of the paper which has just been read, I will announce, with regret, that Mr. Alejandro Alvárez, Jurisconsult of the Department of Foreign Affairs of Chile, has cabled that he is unable to be here, contrary to his expectations.

The paper of Joaquin D. Casasus, formerly Mexican Ambassador to the United States, who is unable to be present, will be read by Mr. Tryon.

ADDRESS OF HON. JOAQUIN D. CASASUS, FORMERLY MEXICAN AMBASSADOR TO THE UNITED STATES,

on

REVISION OF ARBITRAL AWARDS.

International arbitration has very rapidly progressed during the last years and this is due, not only to the efforts of all civilized nations to

submit their differences to the decision of arbitration tribunals, but to the stability that said decisions have obtained, bringing such differences to a definite end.

And this may be easily understood. What would be the object of arbitration in international disputes if the judgment of the arbitrators could not mark their end, and they should continue their former course on account of the inconformity of the parties, it being necessary to initiate anew diplomatic negotiations which might, perhaps, break the cordial relations that must exist among nations?

Owing to this fact, in the special treaties of arbitration, and in the conventions of a general character, great importance has been attached to the fundamental principle by which "every arbitration award, duly pronounced and notified, decides in a definite way the litigation regarding which it has been pronounced."

The first peace conference of The Hague, held in 1899, established this principle in the General Treaty of Arbitration, and its Article 54 declares:

> The award duly pronounced and notified to the agents of the parties in litigation shall decide the dispute finally and without appeal.

The question, though, of a possible appeal or rehearing of an arbitration decision, was a matter of great discussion at said conference. The American delegation presented, as forming part of the American plans for an arbitration tribunal, a principle too wide and by which the fundamental principle, which gave definite force to the arbitration award, would have a nugatory result.

The principle of the American plan incorporated by Mr. Frederic W. Holls, said:

> Every litigant before the international tribunal shall have the right to make an appeal for re-examination of a case within three months after notification of the decision, upon presentation of evidence that the judgment contained a substantial error of fact or of law.

This principle was greatly discussed by the Third Commission charged with preparing the draft of the Treaty of International Arbitration; and not only the principle itself, regarding the revision of awards, but the necessity of such revision in case of error of fact or law, committed by the arbitration tribunal, were widely and fully discussed.

Mr. De Martens declared in an emphatic way that the revision of an arbitration award was contrary in principle to the nature itself of arbitration, because it might give place to the danger of prolonging conflicts which it had been desired to stop, and that this would be just as if the award rendered were to be declared void. Notwithstanding, the majority of nations represented in the Third Commission were in favor of the rehearing, and this principle was embodied in the terms of Article 55 of the General Treaty of Arbitration.

Article 55 reads:

> The parties may reserve in the agreement of arbitration the right to demand a rehearing of the case. In this case, and in the absence of any stipulation to the contrary, the demand shall be addressed to the tribunal which has pronounced the judgment; but it shall be based only on the discovery of new facts, of such a character as to exercise a decisive influence upon the judgment, and which at the time of the judgment were unknown to the tribunal itself and to the parties demanding the rehearing. The proceedings for a rehearing can only be begun by a decision of the tribunal, stating expressly the existence of the new fact and recognizing that it possesses the character described in the preceding paragraph, and declaring that the demand is admissible on that ground. The agreement of arbitration shall determine the time within which the demand for a rehearing shall be made.

Now, can it be said that this principle will give satisfaction to the needs in connection with the firmness of the awards of tribunals of arbitration, and to the need of putting a definite end to the questions submitted to said tribunals?

The precept contained in Article 55 of the General Arbitration Treaty does not fully satisfy the followers of the principle of the rehearing of arbitration awards, because the rehearing can only be obtained when the judgment is based on the discovery of new facts of such character as to exercise a decisive influence upon the judgment of the tribunal, and which facts at the time judgment was rendered were unknown to said tribunal.

But to opposers of the principle of rehearing, that precept is a further reason to justify the deferring of the execution of arbitral awards.

If, as it is perfectly known, the nations who are leading the movement in favor of arbitration really and positively desire the universal application of the principle, it is indispensable that in the next conference of The Hague the finality of arbitral awards be once more

discussed, as fully as possible, so that the force and validity that they shall attain can be established in a definite manner.

The followers of the principle of rehearing could sustain the project of Professor A. Corsi published in Mr. W. Evans Darby's work entitled *International Tribunals* and which is contained in Article 40, reading:

If the agreement does not forbid it, there may be admitted before the same arbitrators the demands for correction or revision of the award, presented by one of the parties, provided they are founded on one of the following reasons, and without prejudice to the rights acquired by interlocutory awards, or parts of the definitive award already executed:

(a) Contradiction in the purview, between the different parts of the definitive award, or between these and other awards published by the same tribunal in the same case.

(b) Forgeries in the documents or in the proofs on which the award is expressly founded, on condition that the party which sustains the falsification of these means of evidence did not possess the knowledge of it during the argument, and that it has been declared by an authority whose competence is not, or cannot be contested, according to the principles of Common Law, by any of the parties in the case.

(c) Error of fact; provided that the award is founded expressly on the existence or on the want of a document or a fact, whose existence or want has not been observed before the tribunal, or could not be proved, whereas after the publication of the award success has been attained in giving such proofs of it that all the parties must admit them as decisive.

Those who believe that the principle of rehearing must be rejected in a definite and complete way could consult Professor De Martens' doctrine, which is the only one in accord with the supreme aspiration, shown by all nations, of concluding their differences through arbitration.

Professor De Martens, in the conference of The Hague of 1899, said:

But, gentlemen, in what does the importance of this question consist? Is it true that a rehearing of a judicial award based upon error or upon considerations not sufficiently founded is not desirable? Ought we not, on the contrary, to desire that an error should be eliminated by new documents or new facts which may be discovered after the close of the arbitration? No, gentlemen, it would be absolutely wrong and unfortunate to have an arbitral sentence duly pronounced by an international tribunal subject to being reversed by a new judgment.

It would be most profoundly regrettable if the arbitral award did not terminate, finally and forever, the conflict between the litigating nations, but should provoke new dissensions, inflame the passions anew, and menace once more the peace of the world. A rehearing of the arbitral award as provided for in Article 55 must necessarily have such a disastrous effect. There should not on this point be left the slightest doubt.

The importance of this matter is so great that the principle of arbitration will be discredited if the arbitration awards cannot be definite; and the progress obtained by the effort of the principal nations of the world will become useless, and only diplomacy, through its numberless resources, could perhaps decide the international conflicts after long discussions which might last years.

I highly appreciate the honor bestowed upon me by the American Society of International Law in allowing me to take part in its meeting and I venture to propose that at the next conference at The Hague, the principle by which international awards, no matter what their nature, should be considered as final and definite without being subject to any rehearing or appeal.

Mr. McKENNEY. I am sure that I but voice the feeling of every member of the Society here present when I express my own profound regret at the absence from this meeting of the distinguished author of the paper which has just been read.

Permit me to make a few remarks by way of reply to the interesting, but, as I think, rather inconclusive suggestions, which that paper presents.

Apart from mere matters of politeness and good neighborliness, things which demand and compel intercourse between nations are of practical moment. It is impossible for us to treat practical matters from an entirely theoretical standpoint. If arbitration is to exist as a compelling, or even a corrective force in the intercourse of nations, it must justify its existence by its works. If arbitral tribunals are but insensate machines to be used without reference to considerations of reason or logic merely to put an end to disputes which nations happen to wage, then it would seem that there would be no real cause for their establishment, for the turn of a wheel, the flip of a coin, or the roll of dice, by agreement between the contending nations, could be made to accomplish the desired result and to end the dispute with equal certainty and much less expense.

If arbitration is to be accepted as a diplomatic rather than a judicial remedy for the solving of international controversies, then it may be that the awards of international arbitrators should be accorded not only respect but also the attribute of unquestionable inviolability. But in such case agreements for submission must be general, without limitations or conditions of any sort, and the awards themselves would better be expressed in words of briefest judgment, without the formulation of premises or of reasoned argumentation. For if the parties to the submission may impose conditions or restrictions upon the submission itself, inevitably will they scrutinize the award to see whether such conditions or restrictions have been respected, and if such scrutiny should disclose that the finite beings who compose the arbitral tribunal have disregarded any or all of such restrictions or limitations. would it not be too great a draft on human nature to insist that no complaint or criticism should be voiced?

Arbitration, if it is to live, must willingly submit its conclusions and its results to the light of reason and to the inexorable demands of logic. I think that awards of arbitral tribunals pronounced by arbitrators, of no matter how high station, or how distinguished for ability, must and should always admit of test in the fires of analysis and logic at the instance of those who are interested in and capable of applying rules of law, whether international or municipal, to the facts and circumstances of the given case.

In the nature of things, arbitrators are but human beings, and as such are as liable to err as are the average human beings with whom we come in daily contact. Arbitrators may be of finer clay and of superior mould, but just as municipal judges, with the best of motives and intentions for their guide, sometimes miss the mark of justice, so also the wisest arbitrator will sometimes err.

Theoretically, every decision of a court of last resort and of arbitrators, whether international or merely municipal, is conclusive and final. Formal declaration to such effect adds nothing either to the ethics or to the commonly accepted logic of a submission to arbitration. But this theory of finality, almost from the birth of the principle of arbitration itself, has been subject to exceptions which with passing years have become more or less definitely recognized by and expressed in the opinions and decisions of authoritative tribunals and in the writings of publicists of wide reputation.

It is true that the lamented De Martens declared, as stated by

Señor Casasus, that the revision of arbitral awards is contrary in principle to the very nature of arbitration, but it is also true that another great luminary in the forum of international debate, Ruy Barbosa, declared, if I mistake not in responding to De Martens himself, that:

(Translation.)[1]

Revision, far from being contrary to the nature of arbitration, is the very essence thereof. In order to render this evident, it would be sufficient to recall that even in private law, in civil procedure, it is universally admitted, and to such an extent that, according to some legislation, a clause by which the parties waive this right is considered void.

Now if, in private law arbitration, when the controversy is between individuals, the right to demand revision is universally guaranteed to the victims of judgments which are essentially defective, it is obvious that for still stronger reasons this right cannot be disregarded when the parties are sovereign nations.

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To absolutely forbid the revision of such awards would be to attribute a sort of infallibility to the arbitrators. Cannot arbitral decisions contain errors committed contrary to the evidence or contrary to

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[1] "Bien loin d'être contraire à la nature de l'arbitrage, la révision en est de l'essence même. Pour le rendre évident, il suffirait de rappeler que même dans le droit privé, dans la procédure civile, elle est admise partout, et à un tel point que, sous quelques législations, la clause par laquelle les parties renonceraient à ce droit, est considérée comme non avenue.

"Or, si dans l'arbitrage de droit privé, lorsque le litige s'agit d'individu à individu, le reméde de la révision est un droit généralement garanti aux victimes des sentences affectées de vices essentiels, il est manifeste qu'à plus forte raison on ne pourrait pas le méconnaître, quand les parties sont des nations, des États, des souverainetés.

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"Interdire d'une manière absolue la révision de ces jugements, ce serait attribuer aux arbitres une espèce d'infallibilité. Les décisions arbitrales ne peuvent-elles se ressentir d'erreurs commises contre l'évidence des faits ou contre la certitude qui résulte des preuves? On ne saurait le nier. Mais il n'y aurait rien de plus nuisible à l'autorité de l'arbitrage que d'assurer à de semblables jugements le privilège de l'incontestabilité. Il faut nous bien tenir à l'idée que l'arbitrage n'est un instrument de paix que parce qu'il est un instrument de justice. Il serait donc illogique de sacrifier les intérêts de la justice à ceux de la paix. Le patriotisme n'est louable que quand il se base sur le droit. La révision en est une garantie, dans les cas d'errear de la sentence. Et qu'auriez-vous gagné à détruire cette garantie? Tout simplement de rendre l'arbitrage moins désirable aux nations en conflit, de rendre les cas d'arbitrage plus rares, de rétrécir la clientéle de l'arbitrage. Si ce que l'on désire, est d'en généraliser l'emploi, ne le surchargeons pas de conditions arbitraires, odieuses, contraires à sa nature même et inconciliables avec les exigences d'une recherche efficace de la vérité." (Deuxième Conférence de la Paix.—La Haye.—1907.—Actes et Documents. Vol. II. Première Commission, pp. 365 et seq.)

the certainty resulting from the evidence? This cannot be denied. Nothing could be more damaging to the authority of arbitration than to assure to such judgments the privilege of finality (incontestability). We must keep to the idea that arbitration is only an instrumentality of peace because it is an instrument of justice. It would therefore be illogical to sacrifice the interests of justice to those of peace. Patriotism is only praiseworthy when based on right. Revision is a guarantee of this in cases of error in an award. And what would you gain by destroying this guarantee? You would simply render arbitration less desirable to nations at variance, render the cases of arbitration more rare, and decrease the adherents of arbitration. If what is desired is to generalize its use, let us not overburden it with conditions which are arbitrary, odious, and contrary to its very nature, and irreconcilable with the requirements of an effective investigation of the truth.

With practical unanimity, writers on international law agree that the awards of international arbitrators may be set aside in certain cases. Merignhac says "On this point all authors are agreed as to the general theory."

It seems to be generally agreed among such writers that such awards may be disregarded, and that too with honor—

(1) when the arbitrators have exceeded the powers conferred upon them by the articles of submission;

(2) when the terms of the articles of submission have been disregarded or evaded;

(3) when the award is equivocal or uncertain;

(4) when the award was obtained by fraud or corruption, and

(5) when the award is contrary to accepted principles of international law or amounts to a flagrant denial of justice.[2]

Phillimore, III, par. 3; Calvo, pars. 1512-1532, declares that

If, however, the arbitrators, by pronouncing a sentence evidently unjust and unreasonable, should forfeit the character with which they are invested, their judgment would deserve no attention.

And Calvo, the *vade mecum* of every Latin-American and Spanish-speaking Power, great or small, declares that international awards may ever be "disregarded" where the arbitrators have proceeded without authority, or when any member of the tribunal is legally or morally in-

[2]Vattel, Book II, Ch. 18, par. 329; Heffter, par. 109.

capacitated, or where there has been bad faith or corruption on the part of such members, or where the terms under which the question was submitted to the tribunal have been disregarded, or where the decision is absolutely contrary to right and justice.

Hall, an English-speaking writer of world-wide reputation, sums up the matter as follows:

> An arbitral decision may be disregarded in the following cases, viz., when the tribunal has clearly exceeded the powers given to it by the instrument of submission, when it is guilty of an open denial of justice, when its award is proved to have been obtained by fraud or corruption, and when the terms of the award are equivocal.

> It is also a well recognized principle of natural intercourse repeatedly exemplified in the practice of the United States, that no sovereign can in honor press or insist upon the recognition of an unjust or mistaken award, even though made by an international tribunal invested with the power of swearing witnesses and of receiving and rejecting testimony.

I confess it seems strange to hear this suggestion as to the inadmissibility of revision or re-hearing in the case of arbitral awards continually reiterated at our meetings. The subject has been twice under discussion in The Hague conferences and the concensus of opinion there—in the second conference advancing beyond the point where it had paused at the preceding conference—each time has favored the right of re-hearing or revision or re-consideration, at least within limits.

Let us examine, for a moment, some cases that have actually happened. Señor Casasus says that the principle of arbitration will be discredited if the arbitration awards cannot be definitive. He says:

> I propose that international awards, no matter what their nature, should be considered as firm and definitive, without being subject to rehearing or appeal.

In that aspect, what has Señor Casasus to say of that classical incident related of Pope Leo X, who acted as arbitrator in a controversy between Maximilian and the Doge of Venice, and who, it is said, pending the submission, carried on secret negotiations and entered into secret pacts with each of the parties to the arbitration? As there both parties to the arbitration appear to have been equally culpable,

equity and good conscience might well have been satisfied by letting the judgment lie as it fell. But how would it have been if but one of the parties had connived with the arbitrator?

What is to be said with regard to awards such as that delivered by the King of the Netherlands in 1827, when, as between the United States and the Government of Great Britain, a contest having arisen over a certain boundary line, the matter was submitted to the King of the Netherlands for decision upon the pertinent facts? In the exercise of his best judgment, and I have not the slightest doubt, actuated by motives of high integrity, the distinguished arbitrator rendered an award which not only was unsatisfactory to both parties, but was found to be absolutely incapable of execution. The award was entirely beside the terms of the articles of submission, and rendered further resort to diplomatic exchanges necessary to effect an adjustment of the matter in dispute.

What is to be said of awards such as those that resulted from the agreement of 1886 between the United States and Venezuela submitting certain claims to arbitration, whereby Venezuela was mulcted in large sums and later, but before the awards had been paid in full, it was discovered that an arbitrator and the umpire had bartered away truth and justice for personal gain and had conspired to render awards which could not be justified in reason or in law?

It is true that for nearly thirty years the United States Government, with respect to those awards, held to the position for which Señor Casasus now contends, insisting that an arbitral award, once rendered, was inviolable and must stand; but rightful insistence, backed by a growing appreciation of the national obligation to do right, became so strong that, in 1885, the Congress of the United States provided for a thorough investigation of Venezuela's complaint, and finding that it was well founded, in 1887 or 1888, again submitted, or rather resubmitted, those claims to arbitration. As a result of the re-arbitration the original awards were greatly reduced, and some claims that had formerly been allowed were totally rejected because without foundation in either fact or law.

What is to be done with cases such as that which arose out of the arbitration between the United States and Mexico over the Weil and La Abra matter, where Mexico, by the judgment of the arbitrators, having been mulcted in grave damages, suddenly discovered that she had been made the victim of forgery and fraud at the hands of the

American claimant. There again the American State Department, looking into the matter, found that there was basis for the complaint of Mexico and agreed that, in honesty and all fairness, the award, which was in favor of an American citizen, should be set aside.

Again, there is the Pelletier case, where the United States and Haiti submitted to arbitration a claim of a citizen of the latter against the former.

The arbitrator was a former member of the Supreme Court of the United States, and the award was in favor of the American claimant. The American Secretary of State, on the protest of Haiti, upon looking into the matter, declared that the arbitrator had so far misconceived the very purpose and object of the submission itself as to render the award nugatory and the United States set the award aside, and freed Haiti from its effect, the Secretary citing in support of such action a declaration by the late Chief Justice Waite to the effect that "International arbitration should always be based upon the principles of national probity and honor."

More recently, in a controversy between the United States and Venezuela,[3] a submission to arbitration was had and the arbitrator rendered an award which the American Government thought was contrary to the bases of the submission. Protest was made against the award, not on the ground of fraud, not on the ground of newly discovered evidence, not on the ground that the case had not been fully presented by the parties, but solely and only upon the ground that, as appeared from the face of the award itself, the umpire who had formulated and declared it had disregarded the very letter of the restrictions and rules prescribed by the parties and expressed in the articles of submission. Correspondence concerning this protest extended over a period of years. Great dispute concerning it was waged in the daily papers and among occasional writers, and debates occurred in various societies such as ours here, as to the right of the United States to sustain such a protest. But, as the result of diplomatic negotiations carried on in good temper between the two nations, it was finally agreed that the question whether or not that award or any award of an arbitral tribunal of such sort was subject to revision, should be submitted to the arbitral tribunal at The Hague, with the further agreement that if The Hague tribunal found revision to be

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[3]The Orinoco Steamship Company case.

admissible, then The Hague tribunal should itself re-examine upon the merits of the claim which had been the subject of the former award. Upon the submission The Hague tribunal unanimously decided that the award that was complained of did violate the original articles of submission and consequently was subject to revision. Having found that essential error had been committed, it set aside the old award and rendered a new one, considerably more favorable to the party claimant.

Even more recently, there has been an arbitration between the United States and one of its great neighbors—a sister nation of the South. It was conducted in the utmost good temper, and in the utmost good faith, and no charge of fraud, nor of undue influence, nor of lack of knowledge of essential facts, nor of newly discovered evidence has been made. But to-day, as I understand it, the parties to that arbitration find themselves in complete accord in saying that the award which was rendered by a distinguished and impartial umpire was not in conformity with the articles of submission and, as a practical matter, is incapable of execution. As I understand it—I am not so well informed about this, however—the two high parties to that submission are diplomatically negotiating to bring about a practical solution of the difficulty which will settle what the arbitral tribunal, by reason of its failure fully to appreciate the question which was submitted to it for decision or by departing from the terms of the submission, failed to settle.

And so I might go on recalling example after example, the mere statement of some or all of which I venture to suggest would carry conviction to the minds of thinking well-wishers of arbitration, of the necessity of revision, of rehearing, or at least of the right to apply for a rehearing in cases where an award read in the light of the articles of submission, which constitute the basis of the authority of the arbitrator, indicates that there has been a departure therefrom. As already said, theoretically at least, the decision of every court—that is, certainly of every court of last resort—is final, and under the necessity of things it should be so; but in practice national courts generally provide for applications for rehearing, and grant the same when ground sufficient to justify such course is shown.

The Supreme Court of the United States, which adjudicates matters not only of commercial interest, but of territorial interest and questions of honor, has for a hundred years maintained in its practice

a rule which permits of the filing of an application for a rehearing in cases where the parties think it is the proper thing to do. It is quite true that many applications are filed and that few are granted; and so perhaps it would and should be in cases of international arbitration. But the right to apply for rehearing, to point out wherein it is thought that the arbitrators, like judges, have failed to do their duty, or failed to appreciate the question or the disputed right which is before them for decision, is a matter which, in my view must be saved if arbitration itself is to be saved.

Referring to rehearings before the Supreme Court of the United States, a number of years ago a case came before that court, involving the interests of many people and title to a considerable amount of property. It was argued, submitted, decided, and the unanimous opinion of the court was delivered by then Associate Justice Bradley. Later, application was made for rehearing. It was denied. Motion was made for issuance of the mandate. It was granted. Then a practitioner of distinction at the bar came before the court and tendered a further application for rehearing, whereupon one of the justices, with some show of impatience, inquired how many times the court should be compelled to listen to applications for rehearing, in a case which had been unanimously decided? And the answer was, theoretically none, but concretely just as many as the interests of justice might require.[4]

Upon consideration of the final application for rehearing, the court permitted re-argument, and upon re-argument delivered, by the mouth of the same associate justice, its unanimous opinion striking out the former opinion and completely reversing the judgment which it had theretofore entered. And why? Because it had been made to appear upon the re-argument that the Supreme Court had completely misapprehended or overlooked a fundamental fact in its relation to the law which controlled and governed the case, and this had passed the scrutiny of those nine wise men without detection. Unless the principle of revision—or "rehearing," if you choose to call it that, had been recognized by that court the injustice of the original decision would have lived forever.

The CHAIRMAN. Is there any further discussion of the paper just

[4] *American Emigrant Co.* v. *County of Adams*, 100 U. S., 61; "Butler's Book"; Thayer & Co., Boston, 1892, pp. 991-998.

read? If not, we will proceed to the next paper on the program, by Mr. James Brown Scott.

Mr. SCOTT. Ladies and Gentlemen: Owing to the lateness of the hour and the fact that we have had enough reading of papers this morning, and very interesting discussion of them, I propose that the Secretary, on this occasion, eliminate himself in the matter of papers, as he has done for the past six years. He had intended to fill a gap in the proceedings by reading his first paper before the Society, but will content himself with asking leave to print.

The CHAIRMAN. The Chair infers that leave to print is unanimously granted, although we are sorry not to hear from Dr. Scott.[1]

The CHAIRMAN. Is there any further discussion of the paper of Señor Casasus? If not, the next paper in order will be that of Mr. Luis Anderson, formerly Minister of Foreign Affairs of Costa Rica, on the subject of the program of the Third Hague Conference.

ADDRESS OF HONORABLE LUIS ANDERSON, OF COSTA RICA, ON THE MONROE DOCTRINE AND INTERNATIONAL LAW.

When, upon suggestion of my friend, Mr. James Brown Scott, I resolved to attend this meeting of the American Society of International Law, I understood that the program for the same was already definitely arranged, and knew there was no room for me. I came, therefore, prepared to listen but without the least intention of speaking. Mr. Scott—with a kindness for which I feel deeply indebted to him—said that as there are present here distinguished representatives from the North and South American countries, I, being the only Central-American here, ought not to remain silent, so that the three Americas should be represented in this assembly devoted to the preservation and strengthening of the bonds of solidarity among the peoples of this continent and of peace and good will among all the countries of the earth. We all know how difficult it is to resist a request from

[1] Dr. Scott's paper will be printed in a forthcoming issue of the AMERICAN JOURNAL OF INTERNATIONAL LAW.

our amiable Secretary, and thus, though I did not bring a specially prepared paper that would be worthy of your attention, I welcome this opportunity to speak on a question of the utmost transcendence for the preservation of peace in the future, and which, for this very reason, I think would be a pertinent subject at The Hague Conference, as well as in any other conference striving to unite the men of every nation in the eternal bonds of justice and humanity.

Scarcely had the ancient Spanish colonies established their independence and came by their own right to occupy a place among the family of nations, when the conservation of their sovereignty and territorial integrity became the object of their greatest and most constant concern. The threatenings of re-conquest by the mother country and the greediness with which the nations of Europe cast their eyes about the rich lands of America, full of infinite possibilities and resources of every kind, held the new republics, during the first period of their independent life, in constant danger of being upset. To this situation of anxiety and positive peril, the declaration made by President Monroe in 1823 brought an end. This declaration resounded throughout the world as the solemn announcement of the right of the American peoples to the liberty they had won at the cost of so much blood and so tremendous a sacrifice.

Here are the words of that great President, whose memory evokes in every citizen of this continent a feeling of gratitude and admiration, and whose words shall echo as long as liberty may live in America:

> The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European Powers. * * * In the wars of the European Powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere, we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied Powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing be-

tween the United States and those Powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition toward the United States.

Such an important and solemn declaration, uttered at the most opportune time, was really the last stone to complete the edifice of Spanish-American independence; and, until this day, it has been the rock against which have foundered all the different enterprises of re-conquest and domination on the part of the countries of the Old World. Before this statement, the vast projects entertained at Verona by the monarchs united in the Holy Alliance had to hold themselves in check and remain reduced to nothing; and the same fate was later shared by the unfortunate adventures of Mexico, the Chincha Islands, the Dominican Republic, etc.

To avail myself of the happy expression of our illustrious colleague, Don Alejandro Alvarez, "the message of President Monroe, although it was not its purpose to declare any principle, nor had anything in view beyond the immediate interests of the United States, yet it formulated with such precision the international situation of the New World with respect to the Old, and synthesized so exactly the aspirations and destinies of all America, that in a certain manner it came to be its gospel."[1]

In fact, the declaration of President Monroe, made under trying circumstances and on the most proper occasion, was for the Iberian Republics of America the fundamental ground of their sovereignty and institutions; for America at large, it was, and continues to be, the symbol of continental solidarity which unites the English-speaking and Spanish-speaking peoples, and places the territory and the institutions of every American country sheltered from violence and possible foreign intervention, assuring them their national life as organizations which shall never be disintegrated by any expansionist ambition.

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[1]Alejandro Alvarez, *Droit International Americain.*

The Monroe Doctrine, so considered and understood, constitutes the corner-stone of our existence as political bodies and is in fact one of the cardinal principles of our international life. Proclaimed and maintained in the most energetic way by the United States, but sustained with no less decision and enthusiasm by the other republics of the continent each time the independence and integrity of the Latin-American nations have been menaced, the Monroe Doctrine has played an important rôle in the incident and has received a new consecration. Thus, it is evident, among other instances, from the declaration of Secretary of State Buchanan in 1848 in regard to the expedition of Flores to Ecuador; the attitude of the United States in regard to the French intervention in Mexico in 1862-1866; the declaration of Secretary of State Seward in regard to the war of Spain with Chile and Peru; the protest of the United States against the reincorporation by Spain of the Island of Santo Domingo in 1861; the declaration of the Government of the United States in view of the conflict over the boundary of Guiana, between England and Venezuela, etc.[2]

It is necessary, therefore, to admit that, thanks to the Monroe Doctrine, maintained by the diplomacy of the United States with such ability, energy and constancy, the Latin-American continent has remained until now immune to the colonizing tendency which characterizes the policy of the great Powers of Europe.

But will this policy of the United States Government be sufficient in coming years to guard the weak nations of America from attempts at conquest by the strong nations? This is a problem with which we may, perhaps we shall, be confronted in the near future, and logic, as well as the most elementary precaution, teaches us all that we ought to forsee the events and prepare ourselves to face them, seeking from now on satisfactory solutions of so delicate a situation.

Not long ago from the German Reichstag re-echoed throughout the civilized world the following words, pronounced by no less a personage than the Imperial Chancellor: "The essential condition of a peaceful state is power. The old truth still remains, that the weak are the prey of the strong." This declaration has resounded in every corner of the earth as the sad and ominous cry which reminds us how far distant still is the realization of the sublime ideal of establishing the realm of justice among nations. For the weak nations of Latin

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[2]Alejandro Alvarez, loc. cit.

America, the utterance of the Imperial German Chancellor has been something like the *Mene, Mene, Tekel, Upharsin,* which announced the potential annihilation of their sovereignty, swept away by the hurricane of conquest.

This is not a pessimistic point of view. The social and political conditions of Europe are truly exceptional and critical. The powerful armaments by sea and by land, those great armies which of themselves are a heavy burden on the citizen,—turned from the home to serve in the ranks against his will,—make necessary the imposition of tremendous taxation, each day more burdensome and oppressive for every class. Add to this an overcrowded population, poverty among the working class, together with the socialistic tendencies which advance everywhere with the onrush and persistence of the tides, and which are already beginning to shake the political and social structure, and you shall see how near is the realization of the prophecy of Lord Grey spoken before the House of Commons on the 13th of May of last year:

> Rebellion will not come until the taxes oppress directly the classes of society for whom life, even in the better conditions, is a constant struggle. When hunger begins to come by reason of the taxes, and it will arrive sooner or later in every nation if the actual military expenses continue increasing as at present, then a rebellion will be near, which will bring an end to this military expense. Such is the end to which the great nations to-day are sinking.

The governments of the great Powers of Europe believe they have found in territorial expansion the means, if not to prevent, at least to delay the danger with which they are confronted; and thus we have seen them, during the last few years, striving to enlarge at any cost their colonial empire, with a view to transfer beyond the seas their overflow of population without weakening the country by migration, but enlarging their frontiers and acquiring at the same time splendid advantages for their commerce. With no limitations other than those which they themselves have been willing to use against each other as a matter of compensation and equilibrium, the European Powers, while rejoicing at the peace the continent has enjoyed since 1871, have been bringing war into the regions of Africa, Asia and the Pacific Islands, in order to raise here and there the flag of the conqueror.

But this colonial policy has proved nothing more than a momentary remedy, as the disease still exists while the medicine is being used up;

the territories appropriated are no longer sufficient, and the old continent offers no more land available for colonization. The danger, as an ever increasing and threatening wave, shows itself again, and the governments, utterly astounded, realize that the colonial policy in which they expected to find their salvation was no more than a truce.

New fields for the colonizing and adventurous spirit would perhaps be the means of prolonging that truce, to set aside for a longer period the danger which is now imminent. But where are these new fields? It is not difficult to see that the answer should be found on this side of the Atlantic. I read in an important book, written not long ago by Dr. Albert Hale,[3] what follows:

> The nations of Europe are crowded and South America offers the only available land on earth into which the surplus can overflow. Who will occupy this virgin soil, when and how, by whom and under what influences will its productive acres be used for the sustenance of man?
>
> The rich and vast regions of Iberian America, in the main unoccupied, as there would easily be room enough for its seventy million inhabitants in any of the great republics; its infinite superiority as compared to all which has been appropriated and colonized to this date in Asia or Africa, must be the greatest temptation to the government of more than one European Power, a temptation now greatly increased by the nearing completion of the Panama Canal, that stupendous work which attracts upon this continent the eyes of the world and all the currents of modern civilization.

If the declaration of the Chancellor of the German Empire, above referred to, to the effect that "the weak are the prey of the strong," is to be taken as the crystallization of present-day ideas in questions of international justice, the weak nations of America find themselves face to face with a danger, equal if not greater, than that with which they were threatened in the beginning of their political existence. The same writer, Dr. Hale, states that—

> If England or Germany assert that might is right, that their capital invested there is best preserved by a direct power which is responsible only to London or Berlin, if overflowing Europe cannot be restrained, and if they seize as colonial possession the virgin acres of these relatively weak nations, there will be bloody war. It may be with more benignant purpose than the Spanish invasion of four centuries ago, but

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[3]Albert Hale, *The South Americans.*

it will likewise be a war of conquest, this time not for gold or for booty but for land on which millions may live.

Further on he adds—

Europe—England, Germany, France, Italy and Spain, have their commercial rights which must undeniably be recognized, but some of them have equally undeniable ambitions to subvert the democratic idea, and they would go so far as to combine their commercial rights with their monarchical ambitions by laying hold of land, which would become territories of Europe snatched from South American nations; over this land they would fly the flag of an hereditary king, and the residents therein would be subjects, not citizens. Thereby would be destroyed the sentiment of American soil for the democratic ideals.

Such is the peril, I say, with which America might be confronted some day. Now, as then, the Monroe Doctrine should per force constitute the wall that should hold back the ambition for territorial aggrandizement at the sacrifice of American soil; with the only difference that such a bar is to-day defended by all the nations of the continent whose diverse resources to-day are infinitely superior to those at hand when the doctrine was first stated with such stupendous success.

An attempt of any Power whatever to force its way into this continent with conquering intentions would, without doubt, be the test stone by which, proving at the same time the efficiency of the Monroe Doctrine, there would be manifested as a whole the solidarity of our continents for mutual defense.

Such solidarity, which is a fact, may perhaps, in some given cases, find itself relaxed through the fear or distrust that some states might entertain against each other through apprehension in regard to independence or territorial integrity. I think that that very Monroe Doctrine would be sufficient to meet the difficulty if only all the American countries, without looking at past events, but with eyes cast upon their future destinies, would resolve to carry out the idea of President Monroe in all its logical developments and conclusions according to what the spirit of the times demands; if they unite to proclaim as they should do, that *"conquest shall be hereafter absolutely proscribed from the American continent, binding each and all, neither to undertake nor to tolerate conquests of American territory,"* the Monroe Doctrine would thus attain its highest consecration, and the bonds uniting the sister republics of the World of Columbus would be made more binding and become real and actual ties of fraternal friendship. That

should be the main point and the most important subject before the next Pan-American Conference.

Such a declaration, whose importance and necessity could never be sufficiently argued, would in reality be nothing new; it has already been formulated on different occasions, from the same high chair from which President Monroe issued his famous doctrine. President Roosevelt, in his speech at the Minnesota State Fair in 1901, said:

The Spanish-American countries in their own interest ought to favor the Monroe Doctrine with the same energy with which we do. We do not intend through it to sanction any policy of aggression of one American state against another, nor commercial preference directed against any Power whatever. In regard to what this doctrine concerns, commercially all that we desire is a fair field and no favor; yet, if we proceed wisely, we should insist in the most strenuous manner that under no pretext will we tolerate the aggrandizement of any European Power at the expense of American territory; and this without consideration as to the manner in which that is done.

President Roosevelt, in his message of February 15, 1905, addressed to the Senate, again declared:

It cannot be too often and too emphatically asserted that the United States has not the slightest desire for territorial aggrandizement at the expense of any of its southern neighbors and will not treat the Doctrine of Monroe as an excuse for an aggrandizement on its part.

Mr. Elihu Root, then Secretary of State of the United States, delivered on July 31, 1906, before the representatives from the American Republics, assembled, at the Monroe Palace of Rio Janeiro, in the Third Pan-American Conference, a speech from which the following words shall forever ring in America as a token of friendship and confidence among its different nations:

We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers that we do not freely concede to every American Republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of the true way

to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth, that we may all become greater and stronger together.

And not many days ago, the present Secretary of State of the United States, Mr. Philander C. Knox, addressing the President of Nicaragua, confirmed the same idea, in such terms of energy and frankness that his words cannot but bring the general conviction that there is no serious motive nor justified distrust which might in any way hinder the good understanding and community of purpose between Anglo-Saxon America and Latin-America in regard to the construction and maintenance of the Monroe Doctrine. These are Secretary Knox's words:

I note, Mr. President, what you have said in regard to the existence of some apprehension here and in other Republics of Latin-America as to the true motives and purposes of the United States towards them under the Monroe Doctrine. I beg to assure you, and I am sure that what I say meets the approval of the people and President of the United States, that my Government does not covet an inch of territory south of the Rio Grande. The full measure and extent of our policy is to assist in the maintenance of republican institutions upon this hemisphere and we are anxious that the experiment of a government of the people, for the people and by the people, shall not fail in any Republic on this continent. We have a well-known policy as to causes that might threaten the existence of an American Republic from beyond the sea. We are equally desirous that there shall be no failure to maintain a republican form of government from forces of disintegration originating from within; and so far as we may be able, we will always be found willing to lend such proper assistance as may be within our power to preserve the *statuity* of our sister American Republics.

On the other hand, such a declaration incorporated in a public treaty between the American republics would impose silence upon those who deny any international value to the Monroe Doctrine, alleging that it does not amount to anything more than the expression of a political tendency of the United States Government, and in no way an acknowledged principle of the law of nations. "The Monroe Doctrine" says an American author, "has not received legislative sanction not even in the country of its origin; its development has depended on successive affirmations of persons officially competent to define it; but without any authority sufficient to obligate the nation with their personal expressions. It continues therefore to remain a political tendency

and not a municipal or international law." Assuming that this proposition is correct, a diplomatic agreement on the part of all the republics should dispose of the objection, as such an agreement would at once convert the doctrine into law, and what is considered a mere political tendency of the United States into a fundamental canon and a binding principle upon the nations of this continent.

I know beforehand that to this thesis there will be opposed the opinion of European authors who say:

> Since the law of nations is a law between all civilized states as equal members of the family of nations, the states of the American continent are subject to the same international rights and duties as the European states. The European states, as far as the law of nations is concerned, are absolutely free to acquire territory in America as elsewhere; and the same legal rules are valid concerning intervention on the part of European Powers both in American affairs and in the affairs of others states.[4]

Without denying the truth included in the first part of this statement, in regard to the last two, that is, in reference to the possibility of the Old World acquiring territory of the American continent or intervening in the internal affairs of the independent nations which occupy it, any observing and impartial spirit will be compelled to conclude that the occurrences that have happened since 1823 show clearly that such assertions are absurd.

The European Powers have not acquired one inch of American territory since independence was accomplished, and if they should now attempt it, they would meet, as I have said before, with the same stumbling block which they found in the beginning, now considerably increased and strengthened.

But be it as it may, it is not a situation for material resistance nor for force which we now contemplate, but one of strict justice, and justice shelters under its protecting wing the noble aspirations of the republics of the New World to live free and independent, and to conserve in peace the rich gifts with which the Creator has favored them. Both from the point of view of political equilibrium and from the infinitely more important one of peace and international justice, it is urgent that the Monroe Doctrine, in fact accepted and respected by all nations, should attain from all of them the consecration of an admitted principle of international law. If in the next conference at The Hague,

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[4]Oppenheim, *International Law.*

such a plausible result could be obtained, there would have been removed a grave source for possible disagreement between the nations of this and the other continents, a disagreement which I hope will never happen, but whose painful consequences it is not difficult to foresee. The acknowledgment of the Monroe Doctrine, as stated, by all the nations of the earth should bring confidence among them and, through it, more intimate relations and friendship.

It would be a great step toward the achievement of the noblest aspiration of the human spirit and which this society has for its motto: *"Inter gentes Jus et Pax."*

The CHAIRMAN. I am requested to give notice that the Executive Council will meet at 2:30 o'clock this afternoon at No. 2 Jackson Place, to appoint committees and hear reports.

I am also requested to ask the members to get their banquet tickets from the Assistant Secretary at the door. If there is no further business in the morning session, the Society will stand adjourned until 8 o'clock this evening at this place.

[Thereupon at 12:30 o'clock p. m., the Society adjourned until 8 o'clock p. m. on the same day.]

MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL.

FRIDAY, APRIL 26, 1912, AT 2.30 O'CLOCK P. M.

The Executive Council convened in the Board Room of the Carnegie Endowment for International Peace, at No. 2 Jackson Place, Washington, D. C., at 2:30 o'clock p. m.

Present:

Mr. Chandler P. Anderson,
Mr. Charles Henry Butler,
Prof. Charles Noble Gregory,
Prof. George W. Kirchwey,
Mr. Robert Lansing,
Mr. Jackson H. Ralston,
Prof. L. S. Rowe,
Mr. James Brown Scott,
Rear Admiral C. H. Stockton,
Mr. Alpheus H. Snow,
Prof. George G. Wilson.

In the absence of the Chairman, Mr. Robert Lansing presided.

The Treasurer's report was made the first order of business. It was submitted by him, received by the Council, and referred to the auditing committee to be appointed by the Chair. The Chairman appointed as this committee Mr. William C. Dennis and Mr. Alpheus H. Snow.

In connection with the auditing of the accounts of the Society, the question of allowing compensation for clerical assistance to the auditors was raised, but, after discussion, the Council decided to take no action.

The appointment of the Committee on Nominations for officers of the Society for the ensuing year was next in order. Upon motion, duly made and seconded, the Chair was authorized to appoint the five members of this committee, whereupon the Chairman designated the following gentlemen:

Rear Admiral Charles H. Stockton,
Professor Charles Noble Gregory,
Mr. Frederic D. McKenney,
Mr. Theodore Marburg,
Mr. Joseph Wheless.

The report of the Standing Committee for Selection of Honorary Members was then in order, and Professor George G. Wilson, the chairman of the committee, reported that, in pursuance of the policy of the committee as reported to the Executive Council at its meeting of April 28, 1911 (Proceedings for 1911, page 116, at page 117), the committee had selected for recommendation to the Society the name of John Westlake, K. C., LL. D., Edinburgh, D. C. L. Oxford, Whewell Professor of International Law in Cambridge University, 1888-1908, formerly member of the Permanent Court of Arbitration at The Hague, author, adviser of the British Government, past president of the Institute of International Law, in this his eighty-fourth year the dean of international lawyers. Upon motion, duly made and seconded, the following resolution was adopted:

> *Resolved,* That the report of the Standing Committee for Selection of Honorary Members be received and the committee be, and it is hereby, authorized to present to the Society the name of Mr. Westlake, with a statement of the policy adopted by the committee in making its selections, as reported to the Executive Council at its meeting last year.

Upon motion of Rear Admiral Stockton, duly seconded, the following resolution was adopted:

> *Resolved,* That a committee of two be appointed by the Chair to draft a resolution for presentation at the business meeting of the Society, expressing the sense of the Society that an international maritime conference should be called by the Government of the United States to consider the question of safety and other appliances for those who go to sea.

As members of this committee, the Chairman appointed Rear Admiral Stockton and Professor Wilson.

The question of the reading of papers in the absence of the persons who write them was brought up by Mr. Lansing and discussed at length, as the result of which the following resolutions were adopted:

> *Resolved,* That no paper prepared for delivery at the annual meetings of the Society shall be read at such meetings by any person except the writer thereof, unless there be a special resolution of the Executive Council or Executive Committee authorizing its reading in the writer's absence.

> *Resolved further,* That, excepting those papers for which special authority is given for their reading by some other person, all papers which the writers are unable to read be read simply by title.

Upon passage of this resolution, Mr. Scott explained that there were two papers, one by the Honorable George Turner and the other by the Honorable Richard Olney, which had been prepared for delivery at 8 o'clock Friday evening, April 26, but that neither of the writers was able to be present. Upon Mr. Scott's statement that he considered the reading of these papers indispensable, the Council—

> *Resolved,* That special authority be, and it is hereby given for the reading from the floor of the papers of Messrs. Turner and Olney in their absence.

The Council then considered the question of the feasibility of so placing the books of the Society as to make them available to the members. The following resolution on the subject was adopted:

> *Resolved,* That Mr. Finch be directed to report at a subsequent meeting of the Executive Council or Executive Committee some arrangement for placing the books of the Society where they can be at the disposal of the members, and also to report upon the question of marking them with a book-plate or otherwise.

Consideration was then given to the place of holding the annual meetings of the Society, and the following resolution was adopted:

> *Resolved,* That in future the annual meetings of the Society be held, if possible, in the same place where arrangements are made for holding the annual banquet.

Professor Kirchwey called attention to the fact that Dr. Scott, the representative of the Society on the Supervisory Board of the American Yearbook Corporation, had resigned the position and that it was necessary to elect a successor to him. Upon motion, duly made and seconded, the following resolution was adopted:

> *Resolved,* That Professor John Bassett Moore be designated as the representative of the American Society of Inter-

national Law on the Supervisory Board of the American Yearbook Corporation.

Whereupon, at 4 o'clock p. m., the Council adjourned.

JAMES BROWN SCOTT,
Recording Secretary.

THIRD SESSION.

FRIDAY, APRIL 26, 1912, 8 O'CLOCK P. M.

In the absence of the President and Vice-Presidents, Rear-Admiral Merrell, a member of the Executive Council, took the chair.

The CHAIRMAN. The first paper before the Society to-night is by Senator Turner, on the question of "General Arbitration Treaties." The Chair regrets to announce that Senator Turner has been unexpectedly called away by telegram, and will be unable to be present this evening. His paper, however, will be read by Professor George W. Kirchwey, of New York.

[Professor Kirchwey read Senator Turner's paper as follows:]

ADDRESS OF HONORABLE GEORGE TURNER, OF THE STATE OF WASHINGTON,

on

THE QUESTION OF THE GENERAL ARBITRATION TREATIES.

I take it that every sensible man who is possessed of proper feeling prefers peace to war, and would welcome with enthusiasm the day when the necessity of a resort to war had been superseded by the institution of a tribunal or of tribunals authorized and empowered to adjust all disputes between nations that are properly justiciable in an international tribunal. But it will not do to permit ourselves to be carried away by that feeling to such an extent that we cannot weigh carefully the concrete machinery offered us as a substitute for possible war, and measure intelligently its suitability to attain the end at which it is aimed. Moreover, while war is a great curse, the power and might of a nation must be preserved to it in emergencies, as the right of defense of one's person and the inviolability of one's home is preserved to individuals notwithstanding the municipal law which gives them reparation for injuries to either; and hence, all proposals for the peaceful settlement of international disputes, and par-

ticularly those that are partial as including two or more nations only, must be looked at with care to see that in the desire for peace, essential national interests, for which international law offers as yet no sufficient guaranties, are not endangered and the nation tied by engagements which would compromise its honor if it had recourse to force in the emergencies to which I have referred. I do not regard war in any emergency as a blessing, but there are times when war is a necessary evil, and the day has not come when any nation can foreclose with impunity its right to resort to that supreme act of national sovereignty. If the nation cannot submit all of its actions to arbitration, or cannot properly renounce in all cases its right to determine for itself its course of action or the propriety of its conduct, it is necessary to state in clear, precise, and apt terms the nature and extent of the obligation it is willing to assume to submit to arbitration controversies which may arise between it and the co-contracting nation.

I am sincerely desirous that the form of a general arbitration treaty be devised which may serve as a model, and I would like to see this model treaty proposed and negotiated by the United States, but my idea of such a treaty is that it should settle disputes between nations, not that it should itself be the source of dispute. Therefore, the form and scope of such a treaty become matters of the greatest importance, and the wording of the treaty, especially the technical terms, creating or limiting the obligation, should be weighed and balanced, so that the minds of the parties may meet and a binding contract be formed, the obligation of which will not be eaten away by interpretation, destroyed by exceptions, or be flatly repudiated under the pressure of real or supposed national exigencies. We cannot afford to adopt in international relations a lower standard of conduct than that which obtains between individuals, and good faith in the performance of an obligation is even more essential in international than in private law, because the nation as a whole suffers by its commission, whereas in private life only the individual suffers and bears the penalty due to his misconduct.

I believe that controversies coming under the following categories should not be submitted to arbitration, and that each nation must determine for itself both the questions and the controversies arising from them:

1. The independence of the nation.

2. The make-up of the body politic.
3. The exercise of domestic powers.
4. Matters of foreign policy deemed by the state necessary to safeguard either its independence or its domestic institutions.

Questions concerning the independence of a nation are not likely to be of frequent occurrence, and therefore, their exception from the general treaty does not seriously limit its scope. Such an exception, however, guarantees the fundamental right of a nation, for, if it be not independent, it loses its standing in the family of nations.

In the same way the composition of the body politic is a matter for the state to determine without the intervention of any foreign Power. Thus, it may properly close its doors to immigration if such a policy seems necessary or advisable. It may determine the conditions upon which foreigners may enter its ports and upon which their residence is permitted. In like manner it may determine whether and upon what terms its citizens or subjects may emigrate. A state has not only the right to exist, but it has the unquestioned and unqualified right to determine what persons or categories of persons shall constitute its population.

It is also for the state to determine the nature and extent of the rights and duties possessed by the central government, on the one hand, and the members composing the union of states, on the other, for these are questions of constitutional, not of international, law. Thus, in the United States, owing to the peculiar relationship of the States to the Federal Government under the Constitution, the question of the collection of debts from the several States, intrudes upon the form of government which the people of the United States have devised for themselves and for the States composing the Union. This is an internal and domestic matter, and just as the nation can decide the persons or classes of persons which shall compose its population, so it can and should protect its form of government and the relations of the smaller bodies politic composing the nation. As previously stated, these are matters of domestic concern to be regulated by constitutional law. Whether or not the general government is responsible to a foreign nation for the act, or failure to act, of one of its members is a different question.

Questions of foreign policy which the state may deem necessary to safeguard its independence or its domestic institutions, fall beyond

the domain of law, and, as the state is independent, it possesses the right to take those measures which, in its judgment, are necessary to maintain its independence and integrity, as well as to protect its institutions. These are political, not justiciable, questions, and, as arbitration is a judicial proceeding, it is evident that such matters should be excluded from a carefully drawn obligation to submit disputes to arbitration. As this question is important in itself, and as it is a matter not of theory but of practice, I shall illustrate it by a concrete example. Thus, in his annual message of December 2, 1823, President Monroe declared the proposed intervention of Europe as a proper occasion "for asserting as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers," and he said further in the same message:

> We owe it, therefore, to candor, and to the amicable relations existing between the United States and those Powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere, but with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition toward the United States.

The doctrine thus enunciated by Mr. Monroe has received application in many forms during the last ninety years of our history. Its immediate effect was to prevent the Holy Alliance, composed of Russia, Prussia, Austria and France, formed for the purpose of crushing the growth of liberal ideas in Europe and of perpetuating monarchical institutions there, from extending the sphere of its operations to America and overthrowing the young republics there erected on the ruins of the Spanish power.

It would be tedious to enumerate all the situations which have called for its affirmation by our government, but there has not been an administration from that of Monroe down to the present, but has

applied it in one form or another. For half a century we protected Cuba from falling into the hands of any European Power through purchase from Spain, by asserting the Monroe doctrine in the most vigorous terms. Mr. Clayton, Secretary of State, in a letter of instruction to our Minister to Spain, in 1849, used this very energetic language:

> Whilst this government is resolutely determined that the Island of Cuba shall never be ceded by Spain to any other Power than the United States, it does not desire in future to utter any threats, or enter into any guaranties to Spain, on that subject. Without either guaranties or threats, we shall be ready when the time comes, to act. The news of the cession to Cuba to any foreign Power, would in the United States, be an instant signal for war. No foreign Power would attempt to take it that did not expect a hostile collision with us as an inevitable consequence.

Upon the Monroe Doctrine we compelled Louis Napoleon to evacuate Mexico in 1866 and leave Maximilian to the fate that soon overtook him as the result of his effort to plant monarchical institutions on the American continent.

In 1870, as the result of the attempt of one or more European Powers to acquire islands in the Caribbean Sea, President Grant announced in a message to Congress, that "these dependencies are no longer subject to transfer from one European Power to another. When the present relation of colonies ceases they are to become independent Powers, exercising the right of choice and self-control in the determination of their future condition and relation with other Powers," and since that announcement no attempt at transfers of American colonies from one European Power to another has been made.

The latest, and perhaps the most important application of the doctrine, was in 1895, when the United States peremptorily intervened to prevent the occupation of Venezuela by Great Britain. The boundary between British Guiana and Venezuela had been in dispute ever since the establishment of the Republic of Venezuela, Great Britain always refusing or failing from one cause or another, to arbitrate the line, and from time to time moving her boundary forward until at the time our government took cognizance of the matter it had embraced the mouth of the Orinoco and a great part of the valuable possessions of the republic. Finally in 1895 Great Britain was willing to arbitrate a fraction of the territories in dispute provided Venezuela

would admit the binding force of her title to the balance. This Venezuela was unwilling to do and appealed to the Government of the United States for protection against her powerful and aggressive neighbor.

Thereupon Mr. Olney, our then Secretary of State, made energetic representations to Great Britain, predicating our interference on the Monroe Doctrine, and insisting that Great Britain should arbitrate with Venezuela not a fraction of the dispute between them, but the entire dispute. Lord Salisbury replied denying that the United States had any right to interfere; that the Monroe Doctrine was any part of international law, and declining to proceed with any arbitration except on the lines theretofore laid down.

It was at this juncture that President Cleveland sent to Congress his special message of December 17, 1895, which rang across both continents like a trumpet call, and made it known to the rulers of all nations that the Monroe Doctrine of the United States was not a mere empty formula. The message after detailing the course of Great Britain, and her apparent determination to proceed with a high hand, recommended to Congress the appointment of a commission to determine the boundary between British Guiana and Venezuela, and to report the same to our government, and concluded:

When this report is made and accepted, it will, in my opinion, be the duty of the United States to resist by every means in its power as a wilful aggression on its rights and interests the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela. In making these recommendations, I am fully alive to the responsibilities incurred, and keenly realize all the consequences that may follow. I am nevertheless firm in my conviction that while it is a grievous thing to contemplate the two great English speaking peoples of the world as being otherwise than friendly competitors in the onward march of civilization, and strenuous and worthy rivals in all the arts of peace, there is no calamity which a great nation can invite which equals that which follows a supine submission to wrong and injustice and the consequent loss of national self-respect and honor, beneath which are shielded and defended a people's safety and greatness.

As the result of this stand, England receded from her aggressive position and accepted arbitration on all points in dispute between herself and Venezuela. The proceedings were held in Paris within a

reasonable time thereafter, and resulted in settling the long pending boundary dispute on lines satisfactory to both nations.

The Monroe Doctrine is not founded on or recognized by international law, but grew out of our peculiar relation to the sister republics to the south of us, and what we esteemed as due to our institutions and theirs, and we have maintained it for more than ninety years by the power and might of the nation alone. It appears to be as vital now as it was the day it was enunciated, and I do not understand that any one in public life in this country questions that fact.

If questions of national policy be not excluded from a treaty of arbitration, we will be asked, whenever we plant ourselves on such a policy, to arbitrate the rightfulness of our action or proposed action, in which case we will be told by the international tribunal that the conduct of nations is to be judged in such a tribunal by the principles of international law, and not by some national policy, no matter how necessary the latter may be considered nor how long it may have been held out to the world as vital and essential.

If we undertake, pursuant to such a national policy, to interfere in the quarrel of two other nations, we will be told that no third nation has title in international law, founded on mere propinquity, or identity of interests, or identity of institutions, to interfere.

We could not even interpose, in such a quarrel as I have imagined, to prevent the incorporation of the territories of the defeated state into its own by the victorious state, either in whole or in part, because we would be told by an international tribunal that by international law the conquering nation alone may fix the penalty to be paid by the defeated nation, and that there is no principle yet known to that law which gives a third nation the right to object.

Take as a concrete illustration, our dispute with Great Britain over the Venezuelan boundary. If the proposed treaty with Great Britain, hereafter referred to, had been in force at that time, we would have been bound hand and foot. We could not have held out the threat of war against her as Mr. Cleveland did, because we would have agreed to forego war and to arbitrate all our differences. The difference we had with her arose from her apparent purpose to absorb Venezuelan territory and her refusal to submit the Venezuelan boundary to arbitration. Our only title to interfere was based on the Monroe Doctrine and Great Britain denied our title to interfere on that or any other ground. That difference would have had to be submitted to ar-

bitration and to European arbitrators, with the result that they would have held, and rightly held, that the Monroe Doctrine was not international law and that there was no principle of international law which gave us a right to interfere in the dispute between Great Britain and Venezuela.

I am in thorough accord with President Taft when he says that there is no reason why questions affecting national honor and vital interests should not be submitted to arbitration as readily as any other question, and that an impartial arbitration is quite as likely as war to do a nation justice on such questions, provided the vital interests in question are recognized and protected by the provisions of international law. If a nation has such vital interests not recognized by international law, but relies for their sanction alone on her force and power, it would seem wise, if not indispensable, that they be excepted from any general scheme of arbitration to be conducted under and agreeable to the principles of international law.

It is said, however, with what truth you have seen, that Great Britain has recognized the force of the Monroe Doctrine, and that we have nothing to fear in that direction from her. If this be true, it applies only to the treaty with that nation; but it must be remembered that the British treaty was only a type, and that we were holding out an identical treaty to every nation in the world. But it is not true that Great Britain has recognized the Monroe Doctrine as having force in international law. In 1823 she was equally concerned with us that the Holy Alliance be not permitted to join with Spain in subduing the revolted American colonies of the latter, and her public men, or some of them, hailed the declaration of Mr. Monroe with approval for that reason. But Mr. Rush, our Minister, reported to the President, after the arrival of his message in England, that in his opinion the non-colonization principle would remain a subject of contest between the United States and England, and Mr. Canning, the Prime Minister of England in that day, said that "so far from assenting to the position that the unoccupied parts of America are no longer open to colonization from Europe, he held that the United States had no right to take umbrage at the establishment of new colonies from Europe on any such unoccupied parts of the American Continent." Great Britain has never, so far as my reading goes, assented, even in a qualified sense, to the validity of the Monroe Doctrine, and is as free to question it in an international court as any other country of Europe. Indeed, she

did so directly and explicitly in the correspondence preceding the submission of the Venezuelan boundary to arbitration.

The declaration of Sir Edward Grey, made in the British Parliament some months ago, that he did not consider the enforcement of the Monroe Doctrine as threatened or impaired by the then pending treaty, is merely the opinion of an eminent man. He may be right or wrong, and I think him wrong, but his declaration was not one of adhesion to the Monroe Doctrine, and it would not even estop Great Britain to set up international law against that doctrine at any time her necessities may require her to do so.

With the distinct understanding that questions concerning the independence of a nation, the make-up of the body politic, the exercise of domestic powers, and matters of foreign policy deemed essential or necessary, be excluded from the obligation to arbitrate, I am in favor of a general treaty which will pledge the good faith of the nations to submit to arbitration all other questions.

We must not forget that arbitration is a specific remedy; that it is essentially a judicial procedure, and that questions unfitted for judicial determination should not be included in the obligation. The desideratum is that nations shall pledge themselves to settle all their controversies by peaceable means, and for these purposes they may supplement arbitration by an agreement reached through their accredited diplomatic agents, or they may have recourse to good offices or mediation. Now, questions of policy can be and have been amicably discussed through diplomatic channels, and questions of policy as well as questions of law may be adjusted by good offices and mediation. We must not extend arbitration so as to include questions inconsistent with its nature, for by so doing we impair its efficiency. If it were the only remedy, we might perhaps be justified in seeking to extend it so that all controversies might be arbitrated, but as the means of direct negotiation exists, and as good offices and mediation may be extended indiscriminately to political as well as legal questions, and as good offices and mediation are in their infancy, as it were, and capable of development, we should resort to them in appropriate cases rather than stretch arbitration to the breaking point or convert it into a purely diplomatic procedure in which the elements of compromise and concession predominate over principles of law and their application to a concrete controversy.

Since arbitration is a judicial remedy, it is necessary that the lan-

guage creating the obligation should be clear and that no confusion should exist in the minds of the negotiators as to their meaning. Otherwise, instead of settling disputes, the treaty itself will be a source of disputes. This difficulty does not confront us in considering existing controversies which it is agreed to submit to arbitration, because the governments know the origin and nature of each individual controversy, and in the fulness of knowledge can submit in whole or in part. But governments cannot know the exact nature of future controversies until they have arisen. In the treaty by which they pledge their good faith to submit future controversies when and as they arise, they must clearly specify the obligation created so as not to seem to submit question which, should they arise, they would be unwilling to submit.

By way of illustration, I shall consider briefly the language of the treaties between the United States and Great Britain and the United States and France, which were advised and consented to, with an interpreting resolution, on March 7, 1912. By the first article of these treaties, questions are to be submitted which "are justiciable in their nature by reason of being susceptible of decision by the principles of law and equity." What is the law and equity here referred to? Clearly it is not the municipal law and equity of either country, because those laws may differ and thus offer an irreconcilable barrier to the decision of disputes betwen the two nations. For this reason, and also because the treaty is one for the settlement of international disputes, we must conclude that the law and equity referred to is that found in the system which has grown up between nations and is familiarly known as international law. But equity, as a separate and distinct system, is unknown to international law. It is said in the books that nations are held to the highest degree of equity and good faith in their dealings with each other, but that means equity in a large and undefined sense. That there are principles recognized by the law of nations for the decision of questions between them, which may be considered principles of equity as distinguished from principles of law, is not stated anywhere by any of the publicists, nor are any such principles set forth or suggested in any diplomatic correspondence known to ancient or modern times. Here it would seem was a fruitful germ for the breeding of disputes in an instrument in-

tended to eliminate disputes, which ought to have been eradicated if the results of the treaties were not to be deplorable rather than beneficial. Since there are no definite principles of equity in an international sense, and the principles of equity in a municipal sense are inapplicable, the inclusion of the word would have given ground for the claim that equity in a broad sense was intended, and, as stated by one of the Lord Chancellors of England, causes might as well be determined by the yard stick or the measure of a man's foot, as by any such an equity. Any limitation of justiciable questions then, which includes the term equity, leaves it in the power of either nation to insist that it is not equitable to call it to account for its action or proposed action in the subject matter of the dispute, and since, under the treaties referred to, the members of the commission composed equally of nationals of the two governments would have been almost certain, having no guide but their conception of broad equities, to espouse the view of their own nation, and since they must have decided five to one that the question was justiciable in order to send it to arbitration, we would have had as the result of the treaties a vexatious dispute superimposed in every case on the original dispute, difficult of determination, and leaving both nations in the humor for war as the only outcome of their several contentions. If this be the meaning of those treaties, then it is well that they never became effective, because they would have settled no dispute by arbitration that the two nations interested did not at the time want settled in that manner, and would, when any really difficult question arose, have left each contending nation in a very ruffled frame of mind.

It is important that the obligation entered into should be complete in itself; that the duty imposed should be determined by each of the parties in common accord, and not be submitted to any external commission or body whatever in order to have the question of justiciability passed upon; that the substance and provisions of the treaty should be so plain and certain that there should be no necessity for anything of that kind. If the contracting parties prefer the phrase "justiciable questions" to the ordinary expression "legal" or "judicial" questions, then the sense in which the expression is used should be defined. The obligation, however, should be general and not limited. All questions of a justiciable nature should be submitted to arbitration, and from the general obligation there should be reserved in clear and unmistakable language those questions which it was not the in-

tention of the parties to submit, such as questions of national policy and of internal concern. These exceptions limit the jurisdiction of the international tribunal, and each party must determine for itself whether or not the tribunal, temporary or permanent, can take jurisdiction. The practice of municipal courts in dealing with questions of jurisdiction, furnishes the analogy for nations dealing with similar questions. Thus, if a court takes jurisdiction of matters beyond its lawful jurisdiction, its judgment would not bind the individual. He could object to the action of the court in thus assuming jurisdiction before the case was tried, or he could avail himself of the right to question the jurisdiction of the court after it had passed judgment and could have the judgment set aside. A nation possesses the same right. It is true that the court determines its own jurisdiction, but, as stated, it determines it subject to the proposition that if it decides it wrongly, the jurisdiction it assumes does not bind the suitor, for a judgment of a court without jurisdiction has no legal effect. The same principle should apply to nations, and the question of jurisdiction should be determined before submitting rather than after judgment, because in the latter case the good faith of the nations would seem to be involved. In simplest terms, instead of submitting a question which it thought should not come within the jurisdiction of the court and taking the objection later, the nation should make its objections at the outset before the case has been allowed to go to trial. This is as far as any instrument of this kind can bind nations. There always comes a time when they must take the responsibility of saying they have or have not agreed to submit a given question. The great thing is to have the exception clear, certain, and comprehensive, so that there cannot be any question in fairness between the two nations as to what is justiciable, and so that a nation cannot avoid its obligation under the treaty without doing violence to the plain import of the treaty.

In suggesting that there should be exceptions to the obligation to submit justiciable questions to arbitration, I would not have you suppose that I am opposed to arbitration. On the contrary, I am in favor of its application to all questions to which it can properly extend, but in order to prevent future dispute and uncertainty as to the meaning of the obligation, I am insistent that the intentions of the parties should be expressed in clear, precise and technical language which shall give full expression of their intent.

I would have the arbitration treaty provide that all questions arising

between the two nations should be submitted to arbitration, either in accordance with the rules of The Hague tribunal, or under some equally simple and efficacious system to be outlined in the treaty, and I would then provide by way of exception that no action or proposed action of either nation involving its independence, or the regulation of its internal affairs except in so far as it might have obligated itself with respect thereto by treaty, or its foreign relations based on national policy and not justified on principles of international law, should be called in question under the treaty. I do not attempt to employ the exact phraseology of the proposed exception, but have no doubt that apt terms, not susceptible of misunderstanding, may be found in which to couch it. Under such a treaty all disputed questions of law or fact arising between the two contracting nations, other than those specially excepted, would be justiciable.

Disputes concerning the existence or non-existence of fact should be submitted to impartial examination, and for this purpose the commission of inquiry, as perfected by the Second Hague Conference, should be utilized. The convention for the pacific settlement of international disputes provides that, failing a direct agreement to the contrary, the commission should consist of five members, one to be chosen by each of the disputants from among their nationals, the balance to be chosen by agreement from strangers to the controversy. The fact in dispute should not be found by a mixed commission composed of an equal number of nationals, as they would to a greater or less degree have the attitude or views of their respective governments. The fact in dispute would, by the rules of the Hague convention, be found by three impartial persons, aided, but not controlled or outvoted, by the national element. Very often the finding of a fact determines the controversy, but the Hague convention provides that the fact be found and reported to the government without recommendation, unless the commissioners have been specifically empowered to make a recommendation. The fact is thus ascertained and the governments are left free to determine their future action.

In the next place, questions concerning the existence or non-existence of a principle of law or its application to a treaty, convention, or international agreement, or to a concrete state of facts, is a judicial question, and, with the exceptions heretofore specified, should be submitted to arbitration.

The rules adopted by the Hague Conference appear to afford a fair

and efficient method of presenting such questions and having them determined by impartial arbitrators, and unless proscribed in the treaty, would apply without any reference to them, but it would be as well to expressly adopt them.

Controversies arising out of the policy of the nations, either internal or external, except such as might be covered by treaty provisions, would be eliminated from the class of questions subject to arbitration, but even with respect to such questions, the treaty need not be entirely silent. Where nations differ on such questions, either on lines of strict right or on the principles of comity which should actuate neighbors, the differences could probably be discussed with advantage by commissioners appointed for the occasion. It would be well therefore to have the treaties provide that the two nations would, at the request of either, appoint commissioners, composed of their own nationals, to consider and report on such questions.

Political controversies or questions of a political nature involving the foreign policy of nations, may well be discussed by commissioners specially appointed for the occasion. Upon examination it may be found that some of the questions are arbitrable and the commissioners can recommend that they be referred to arbitration, and, if necessary, can formulate the principles of law to be applied by the tribunal. A treaty involving their recommendations, the principles of law, and the terms of arbitration, can be negotiated just as in 1871 the commissioners appointed by Great Britain and the United States negotiated the Treaty of Washington, providing for the arbitration, among other things, of the Alabama Claims.

It will be seen from the foregoing that there are, in my opinion, three categories of international controversies: (1) Disputes involving the existence or nor-existence of a fact; (2) Disputes involving the existence or non-existence of a principle of law and its applicability to a concrete question; (3) Questions of national policy. Each one differs in material respect from the others and may properly be treated in a different manner. It is not essential that all controversies be treated alike, but that all controversies be adjusted.

I would propose as the general outline of a treaty conforming to the views hereinbefore expressed, the following:

First. A preamble stating the purpose and desire of the parties to settle peaceably all disputes between them.

Second. A general agreement to that effect, limited by the exception before indicated.

Third. An agreement to listen to, but not necessarily to accept, good offices and mediation.

Fourth. An agreement to appoint commissioners to consider and report on differences not cognizable under the treaty, except such as relate to or affect national independence.

Fifth. An agreement to unite on a *compromis* in each case submitting to the Hague tribunal, under the rules of that tribunal, questions of law and fact properly cognizable under the treaty, including the right of that tribunal to settle the *compromis* if the contracting parties are unable to do so.

We still have to deal with the question of the prerogatives of the United States Senate in the matter of the submission of disputed questions. I can see no reason why this nation may not once for all agree to submit prescribed questions to arbitration, and why the consent of the Senate to such an agreement does not answer all the purposes of the power reserved to it. That, I believe, is the opinion held by a majority of those whose business it has been to study and apply the constitution. With reference to the submission of questions to a commission of inquiry, the advice and consent of the Senate cannot be necessary to the appointment of such a commission. The commissioners would have no power to bind either nation, but would simply consider the questions involved and report to their respective governments the basis of a treaty which might be negotiated and submitted to the Senate, as in the case of the Treaty of Washington.

In this proposal for a general arbitration treaty, certain questions of a vital nature would be excluded from the scope of arbitration, but they are questions, I submit, which this nation can not afford to agree to submit to arbitration. But they would be subject to examination and report by special commissioners, and would also come under the influence of good offices and mediation. In this way the active field of international controversies would be covered, and appropriate machinery devised for each form of concerted action or submission contemplated by the contracting nations.

The CHAIRMAN. Professor Kirchwey has kindly consented to read a paper in connection with this subject, prepared by former Secretary of State Richard Olney, who is unable to be present this evening.

[Professor Kirchwey read Mr. Olney's paper as follows:]

Address of Honorable Richard Olney, Formerly Secretary of State

on

General Arbitration Treaties.

It is undoubtedly desirable, in the interest of the arbitration of international controversies, that at the next Hague Conference a form of treaty should be presented which, while covering all differences between states, shall steer clear of the difficulties which in the past have wrecked important treaties of that character. It is a matter in which the United States may be expected to lead, having by precept and example so often distinguished itself as a pioneer in movements tending to do away with war between nations. Facts must be looked in the face, however, and it is apparent that the present position of the United States with reference to this subject is not so advantageous as could be wished. No two countries of the world are so favorably situated for the purposes of an arbitration treaty between them inclusive of all differences as are Great Britain and the United States. Through racial, social, and commercial ties ever knitting them closely together, war between them has become almost unthinkable. Yet two trials for such a comprehensive treaty have failed and the official position of the United States today seems to be that there is a class of questions which is necessarily to be excluded from any general arbitration treaty. The class covers controversies described as affecting "the vital interests, the independence, or the honor" of the parties. In the English-American treaty of 1897 such controversies were disposed of by sending them to arbitration, but so constituting the arbitral court that an award must have the assent of the representatives of the losing party or of a majority of them. In the treaty of 1911 it was sought to meet the difficulty by a joint commission of inquiry empowered to investigate and decide whether a question was or was not arbitrable and should or should not be arbitrated. But neither plan proved to be acceptable to the United States acting under the treaty-making power vested jointly in the President and Senate.

Nothwithstanding past failures, it is not believed that the United States should be deemed to be irrevocably committed to the position that it will make no general arbitration treaty which does not exclude from its operation what are claimed to be non-arbitrable questions as above defined. Neither is there any controlling reason why its repre-

sentatives at the next Hague Conference may not propose a draft of treaty between nations which shall be so framed as to minimize if not remove the objections to making all controversies at least prima facie arbitrable. Such a draft would, of course, be without the official endorsement of the United States Government. But it could be assumed to have the sympathetic endorsement of the American people, who are believed to have strongly favored the efforts of three Presidents to make an English-American treaty from which no subject of difference should be excepted. A draft treaty of that character presented by our representatives at The Hague would be received not only with respect, but with great interest; would be discussed in all its aspects with earnestness and ability; and, if generally approved, could be urged upon the United States Government as something to be adopted and used in a renewed effort to substitute arbitration for war as the means of settling international disputes.

In considering the feasibility of such a draft treaty, it may not be wholly superfluous to note that matters of national policy, domestic or foreign, are universally conceded to be outside the category of arbitrable questions. Thus, the right of every independent state to determine for itself what persons and what property shall have access to its territory, or with what other state or states it will form amicable relations for mutual advantage, can not be drawn in question by any other state. It is to be assumed also for present purposes that the discussion deals not with weak states which can not defend themselves against aggression either directly, or indirectly through alliances, but with states entirely competent to protect themselves from spoliation or outrage. No such state, it is claimed, should or will litigate its honor, its independence, or its vital interests. If that be admitted, two difficulties is connection with the making of a comprehensive arbitration treaty at once present themselves. One is that what differences will touch honor, independence, and vital interests can not possibly be defined in advance, and that, even after a difference has actually arisen, its nature as being of the arbitrable or non-arbitrable class can hardly fail to be matter of real doubt and debate. The other difficulty is that, whether an actual difference touches its honor, independence, or vital interests every nation, it is urged, must decide for itself and can not consent to have determined in any other way. The practical problem, therefore, is how to lessen the force of these obstacles and upon what lines an arbitration treaty between nations may be so constructed as,

while recognizing the obstacles and not denying them any legitimate operation, shall yet be the nearest possible approach to a treaty covering all differences.

It will conduce to that result, it is believed, if such a treaty shall expressly declare that all differences between the contracting parties of whatever character, unless adjusted by diplomacy, shall be settled by arbitration, and that whenever a difference not so adjustable presents itself, the parties shall immediately proceed to set in motion the designated machinery by which the arbitration is to be made effective. The mere existence of such a treaty will have a desirable moral effect upon the governments and peoples of both the parties. It will accustom them to consider arbitration as the normal mode of settling their difficulties and to look upon any other mode as unusual and extraordinary and as justifiable only by some great and exceptional emergency.

It will also conduce to the same result, by removing the objections already stated, if such a treaty, after making all differences arbitrable, shall then reserve to the legislature of either of the contracting parties the right and the opportunity to withdraw a particular subject-matter from arbitration by a declaration that it concerns its honor, independence, or vital interests. In this connection, the modern organization of the governments of the great states of the world is to be noted. On the one hand, the principle of democracy is so far accepted and so far controls that the legislative power is exercised by representatives chosen, theoretically even if imperfectly in practice, by the free suffrages of the people. On the other hand, the treaty-making power, together with the measures and proceedings incident to its execution, is practically vested in the executive branch of the government. It is that branch which, under a treaty excluding the supposed non-arbitrable class of questions, would decide whether a difference was within that class, and, if deciding that it was, would block arbitration. Under the all-inclusive form of treaty now proposed, however, arbitration will go forward in the regular prescribed course unless arrested by the action of the legislative branch of one of the governments concerned. It is that branch which will decide against arbitration if it is prevented, and which will assume the responsibility of such decision, as it properly should for obvious reasons.

The national legislature is the best representative of the people of a country and is the most closely in touch with the sentiments, views, and interests of its people.

The direct representatives of the people should take the responsibility of a decision which may lead to war because it is by the people that the losses and sufferings of war are to be borne.

The executive administration of a nation as the agent of its dominant party may easily be influenced by motives of a secret and personal nature; may conceive party success to be identical with national honor, independence, or vital interests; and is only too likely to proceed without that thorough enlightenment which is only possible when the discussion of a measure is by party opponents as well as by party friends.

When a national legislature, on the other hand, is confronted with the alternative of risking or making war, or of permitting arbitration of a difference with another nation to take its appointed course, there will necessarily ensue such investigation, discussion and deliberation as will bring out the merits of the dispute in all its aspects and will enable the dictates of genuine patriotism and sound policy to exert their legitimate influence.

In short, to refer the decision of such an issue to a national legislature ensures bringing into play two forces of prime importance in the interest of peace—to wit, full publicity of all material facts and considerations, and sufficient time for reason to become the deciding factor in the result.

By reason of the solidarity of modern civilized states, public opinion as manifested not only in those directly concerned but in all is sure to act with enormous force whenever war between any of them is seriously threatened.

When Earl Russell, speaking for the government of the day, characterized the American proposition to arbitrate the so-called "Alabama Claims" as inconsistent with the honor and dignity of the British throne and people, the door seemed to be finally closed upon any pacific settlement. It was reopened later by the pressure of public opinion, which had been given time to crystallize, which discovered that there was a real wrong to be redressed, and which led the British Government to seek and find a way to arbitrate the claims without prejudice to honor or substantial interests.

A similar case was presented and a similar result followed in respect of the boundary controversy between Venezuela and British Guiana, which was at first claimed to be impossible of arbitration by reason of the rights and equities of British settlers.

These instances are striking examples of time and publicity and an

ensuing educated public opinion as potent preventives of war. It is a conspicuous merit of such an all-inclusive arbitration treaty as that under consideration that, while in and of itself a constant influence for peace, legislative interference with it can not take place without giving such preventives their fullest operation.

It remains to note that it is possible for the legislative branch of a government as well as the executive to go astray and to be misled into declaring an arbitrable difference to involve honor, independence, or vital interests. But such a declaration is not a finality and may be revoked by legislators of their own motion or through the influence of their constituencies. Further, if such a declaration brings war in sight, it also compels investigating the preparedness for war, comparing the warlike resources of the parties, and counting the cost generally—considerations of a most sobering as well as persuasive character. Here again the solidarity of modern states operates as a strong conservator of peace. The length of the purse rather than of the sword now determines the fortunes of war, and the most bellicose of great Powers can not but be staggered by the prospect of disrupting the closely interlocked relations, pecuniary and commercial, between its own country and the country to be assailed. In no quarter will the widespread ruin of such a disruption be more keenly appreciated than by the legislature of a country, intimately and practically acquainted as it must be with its industries and business interests—in no quarter is there likely to be more zealous effort to preserve "peace with honor." Nevertheless, when all is said, until the millennium arrives, the possibility of war is not to be wholly eliminated. Treaties of arbitration and all the other pacific instrumentalities the wit of man can devise can do no more than to make the possibility as remote as is humanly practicable.

[The Chairman announced the following committees:

Auditing Committee: Messrs. W. C. Dennis and A. H. Snow.

Nominating Committee: Professor C. N. Gregory, Mr. McKenney, Mr. Marburg, Rear-Admiral Stockton, and Mr. Wheless.]

The CHAIRMAN. Gentlemen, the papers to which you have listened are now open for discussion.

Mr. JACKSON H. RALSTON. The Senator's experience in connection

with international matters is such as to command for him respectful attention to whatever he says, and that we most cheerfully accord. Yet I must think that in many regards his argument is singularly inconclusive and incomplete.

Before addressing myself to what I want to say in regard to the address proper, permit be to allude to one or two expressions which I think deserve our consideration even momentarily, and deserve large consideration in the final outcome of the general subject we have in mind.

Senator Turner in one connection says that war is a necessary evil. Now, we have to bear in mind that war is a thing of human origin and under human control. If that be so, I must deny the statement, oft repeated, that war is a necessary evil, for a thing which can be controlled and which ought to be controlled, and which is human in its origin, is not a necessary evil. War is an evil which under certain circumstances it may be difficult to escape from. That it is a necessary evil I particularly deny.

Senator Turner says very decidedly that it is international law that a conquering nation may exact whatever it will from the nation conquered, and that that is recognized by the law writers. Mr. President, I am going to take the liberty of denying that. I will agree, and we must agree that many international law writers have said just that thing, and we must agree that in works of international law, what is called law is laid down as stated by Mr. Turner. But let us consider the naked facts. Suppose a writer on criminal law were to say that he has noticed that whenever the robber overcame the person robbed, he took away from him whatever he choose of his possessions. And suppose he said that there were a hundred different instances of that kind, and he enumerated them one after another in his book on criminal law. Would there then be a law of robbery, because those distinct, isolated facts had been enumerated within the pages of a textbook relating to criminal law?

I take it that the term "law" is a term of grand application, that it has no application to robbery, and that it has no application to the distinct and separate several events which occur when conquering nations possess themselves of the goods of conquered nations. In order that there should be law, there must be running through them all a common principle to which men can with safety appeal, and that principle must have a philisophical or an ethical foundation, and in the absence

of that philosophical or ethical foundation there is no law. There is simply gathered together a bundle of disjointed facts. Now that appears to me to be the truth with regard to that thing which Senator Turner states to be international law. It is not international law, even though it be so proclaimed, and it never will be international law, because it is not founded upon any ascertainable basis of right.

But what I have said so far is in a way apart from the argument, and yet it seems to me proper to say it, at least by way of suggestion, because these things have to be thought out and straightened out, and there must be straight thinking on international law before we arrive at straight conclusions as to what is or is not law, and before we regard as law repeated facts which are not law.

Senator Turner believes that four classes of things should be reserved from international arbitration. The first of these is the independence of the contracting parties. Now I am prepared to accept the view that independence is not an arbitrable subject; and to put that in an arbitral treaty, although it has been done, and done more than once, is putting in words which under the circumstances are absolutely meaningless. If we put in an arbitral treaty the statement that we will discuss and settle by way of arbitration between ourselves all disputes except those which relate to the independence of the several parties, although that has been done, and I speak with due respect to those who have done it, we are doing an aimless thing. The very hypothesis upon which arbitration rests, upon which treaties of arbitration rest between nations, the very hypothesis of it is the independence and the equality of the two parties, and to iterate it becomes absolutely without meaning. So we may dismiss the item with this statement.

Mr. Turner next suggests that the nature of the body politic is not arbitral and should be excepted from treaties of arbitration. Of course, it is not the subject of arbitration, for the very reason that it offers no international question. Why should you put into a treaty a limitation upon the action of an arbitral court as to a thing which is in its nature not international? To put it in is once more a waste of words and a confusion.

Again he says that arbitration must not relate to the exercise of domestic powers. Of course it must not, and never has. And why should that be in a treaty? The placing of it in a treaty or the imposition of that as a limitation upon arbitration is as purely a work of

supererogation as well could be. The very language shows it. You are dealing with international arbitration. Therefore why should it relate to the exercise of domestic powers? So I say that this point has no relation whatever to treaties.

Take the fourth point, matters of foreign policy deemed by the state to be necessary to safeguard either its independence or its domestic institutions. The argument under this head would be so long that I could not enter into it. I only want to make a few observations. It is noteworthy that in support of that proposition Senator Turner refers to the Monroe Doctrine and its several applications, down even to its application in the case of Venezuela. Now, if we think a moment we will see that, under this language, a difficulty arising with relation to the Monroe Doctrine, supposing it to arise, would be arbitrable, although Senator Turner relies upon this language to put it beyond the reach of arbitration.

"Matters of foreign policy deemed by the state to be necessary to safeguard either its independence or its domestic institutions." Now who ever supposed for a moment that the United States considered the action taken by President Cleveland and Secretary Olney in the Venezuelan matter as taken to safeguard either the independence of the United States or the domestic institutions of the United States? I say it was taken for the purpose of giving voice to an American sentiment, which by the way was not dependent at all upon the Monroe Doctrine, because it was the sentiment of fair play which existed in this country, and did not have to find its inspiration in anything other than the hearts and consciences of the people. So I say that under the very proposition of Senator Turner the Monroe Doctrine could be a subject of arbitration.

But that does not reach the question which I have not the time to go into, because as I said, the argument would be too long. It raises up the whole question whether there is any national dispute whatever which should be reserved from arbitration. I submit that from my point of view no dispute in which the United States is or can be concerned should be reserved from arbitration. The United States is great enough not to do wrong. It is great enough to accept the challenge when any nation says it has done wrong, and to submit its action to the arbitrament of competent men. And we could do no better than to have the power of arbitral treaties just that strong, and present ourselves freely and openly to the world with our case,

whatever it may be. We have no need of the Monroe Doctrine to defend our independence or our institutions. It is only about the Monroe Doctrine that it is suggested that we ought not to submit all propositions to arbitration, at least under this heading. The Monroe Doctrine today is a sentiment and not a matter of public policy with the United States. It becomes merely, as I say, the expression of a sentiment, but it is the expression of a sentiment against which, in the present state of civilization, with a sufficient number of arbitral treaties throughout the world, the world will not resist.

Mr. THEODORE MARBURG. Mr. President and Gentlemen, I listened with delight to the stimulating paper of Senator Turner, and feel that we are greatly indebted to Dr. Kirchwey for the agreeable and pleasing delivery of it.

Instead of being an argument against the treaty of August 3, 1911, with Great Britain (the treaty with France being in the same terms), to my mind Senator Turner's paper is an argument for it.

Senator Turner very properly says that the important thing is not that all questions should be arbitrated, but that all questions should be settled peaceably.

Now what does the treaty, even as amended, do? At the outset I should say, differing a little from Mr. Ralston, that arbitration is in its nature a judicial process, and that it should concern itself principally, if not exclusively, with questions of law. The treaty as amended provides in its preamble that we shall settle all questions peaceably, and it is a treaty, remember, between two great self-respecting countries. It is not a treaty between a progressive country and a backward country, or between two backward countries who are unwilling or unable to carry out their promises, but it is a treaty between countries that have traditions of honor and self-respect, traditions of living up to their promises. The preamble says that all questions shall be settled peaceably.

Senator Turner refers to disputes of fact. Now our treaty, even as amended, takes care of his demand there. It sets up a commission of inquiry. He points to the Hague commission of inquiry, intimating that it is superior to the commission of inquiry set up under this treaty. The Hague commission of inquiry is superior only to one form of commission of inquiry that may be set up under this treaty. You will recall the language of the treaty: it provides that this commission of inquiry shall be composed equally of nationals

of the two countries, or that it "may be otherwise constituted." Now certainly the fact that the Hague commission of inquiry is constituted with only one national of each country upon it, and a majority of non-nationals, makes it superior to the form of commission as constituted under the first alternative of the treaty of August 3. But under the second alternative of that treaty, the provision that the commission "may be otherwise constituted," it is possible to form a commission composed entirely of non-nationals. No one can listen to a discussion of the subject of nationals and non-nationals upon commissions of inquiry and upon arbitration tribunals without soon reaching the conclusion that the ideal and desirable thing is a commission composed entirely of non-nationals, something more advanced than the Hague commission of inquiry, which contains two nationals; and I believe that, in the course of time and under the pressure of public opinion, even our United States Senate can be led to that high position.

The second category of disputes which Senator Turner treats are those relating to questions of law. The treaty provides that justiciable questions, that is, questions which can be interpreted by the rules of law or equity, shall be referred to arbitration. Arbitration is therefore considered by the treaty to be a judicial process, only justiciable questions being so referred.

The reference is to the Permanent Court of Arbitration, or to an arbitral tribunal which may be specially constituted if necessary. I am revealing no confidence when I state that the President of the United States and the Secretary of State both say that the term "a court of arbitral justice" is put in there with a view of making use of the Court of Arbitral Justice which was accepted in principle by the Second Hague Conference, a court which shall be a true court of justice. Now, when this court shall have come into being and shall have won the confidence of the world, all questions under Article I of the treaty—justiciable questions—will naturally be referred to it. To set up new institutions as substitutes for war is one thing. To get the nations to use them is quite another. The advantage of this clause of the treaty is that it provides cases for the court and will set it going promptly.

Then, you have the third category to which Senator Turner refers, questions of national honor. The treaty by its preamble provides for settling such cases. It states that questions involving law shall be determined by arbitration, regarding arbitration as a judicial process.

It states that all questions shall be settled peaceably. Does it not therefore provide for just what Senator Turner stipulates, the submission of great questions of national policy to some other tribunal? Can we not under this treaty submit such questions to a commission of inquiry or to mediation? Can we not resort to any other form of settling international controversies, which is accepted today, or devise new forms, if necessary? The important thing is that, as the treaty provides, these two great, self-respecting nations shall settle all controversies peaceably.

Now the Senate stipulated that the treaty should not be so interpreted as to compel the submission to arbitration of certain specified questions, namely those relating to the admission of aliens to this country and to our schools, those relating to the money obligations of States, to territorial integrity, and to public policy.

When the Senate excepted those questions from arbitration it did not, however, relieve the contracting countries of the binding force of the preamble, the obligation to settle those very questions peaceably. Therefore I maintain that the treaty, even as amended, meets entirely the conditions laid down by Senator Turner.

Mr. DENNIS. As I understood Senator Turner's most interesting paper, he makes the suggestion that the word "equity," or perhaps the phrase "law or equity," in the recent arbitration treaties with England and France would give to the joint high commission powers somewhat resembling those of the English Chancellor in the days when the Chancellor's power was supposed to vary in proportion to the length of the Chancellor's foot.

Now, with all deference for Senator Turner and for other eminent men who have made substantially the same suggestion, I do not believe that this proposition is tenable in view of the international practice for the last one hundred years and, particularly, in view of certain decisions by arbitral tribunals. The words "justice and equity" are not new. They are as old as arbitration itself. From the Jay treaty of 1794, which ushered in the modern era of international arbitration, to the Prize Court Convention to which the Senate has but lately given its advice and consent, these words have been employed again and again in the arbitration treaties of the United States.[1]

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[1]The following chronological list of arbitration treaties of the United States

Ordinarily the words appear to have been readily understood. Sometimes, however, it has been attempted to make the point that under cover of the word "equity" the court was empowered to exercise arbitrary power, that the court was entitled to decide "according to the conscience of the arbitrator," whatever that might mean.

I think I am safe in saying that every time that suggestion has been made it has been negatived by the tribunal. The point was taken in one case before the American and British Claims Commission which passed upon claims arising during the Civil War and, in a very interesting opinion, Mr. Commissioner Frazier, the United States commissioner, held that the point was not well taken. In 1903, as you all know, a number of the nations entered into arbitration protocols with Venezuela in substantially identical terms. By the terms of these protocols the arbitrators were empowered to decide in accordance with "absolute equity, without regard to objections of a technical nature or of the provisions of local legislation." The umpire of the American-Venezuelan Commission did rule, in certain cases, as if he thought these words actually gave him unrestrained liberty to decide one way in one case and another in another, according to his individual conscience or idiosyncrasy without any particular reference to consistency or to recognized rules of law. When one of

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using the expression "justice and equity" or its equivalent makes no pretense of being complete: Great Britain, Treaty of Amity, Commerce and Navigation (Jay Treaty), November 19, 1794, Article VI; Great Britain, Convention Respecting Fisheries, Boundary and the Restoration of Slaves, October 20, 1818; Great Britain, Claims Convention, February 8, 1853; Costa Rica, Claims Convention, July 2, 1860; Great Britain, treaty for settlement of claims with the Hudson's Bay Co., etc., July 1, 1863; Great Britain, Treaty of Washington, May 8, 1871, Article XII (Claims arising during the Civil War aside from the Alabama Claims). The following treaties or conventions use language the same or substantially the same as the Seventh Article of the Jay Treaty with Great Britain which reads, "according to the merits of the several cases and to justice, equity, and the laws of nations": Spain, Treaty of Friendship, Boundary, etc., October 27, 1795, Article XXI (Claims arising during the war between Spain and France); Denmark, Claims Convention, March 28, 1830; Peru, Claims Convention, January 12, 1863; Mexico, Claims Convention, July 4, 1868. [See Treaties and Conventions of the United States, etc.; see also argument of the United States, Orinoco Steamship Case, before the Hague Tribunal, page 117, note.] Article VII of the Prize Court Convention provides, that in the absence of any controlling treaty provisions or generally recognized rule of international law, "the court shall give judgment in accordance with the general principles of justice and equity," while Article VII of the Pecuniary Claims Convention with Great Britain signed August 18, 1910, makes it the duty of the members of the tribunal, upon assuming their functions, to take oath to decide, "in accordance with treaty rights and with the principles of international law and of equity."

these decisions, the Orinoco Steamship Case, was taken to the Hague Court for revision, the defense which the Venezuelan agent made of the umpire's decision was just exactly that, that under those words "absolute equity" the case was submitted to the unrestrained conscience of the arbitrator and that he could not possibly have transgressed any rules laid down in the protocol because he was not bound by any rules.

This position was repeatedly and strenuously urged by the Venezuelan representative. It was, as he said, his "capital argument," and that capital argument was negatived by the tribunal, which held that the words "absolute equity" could not be taken to excuse the arbitrator from applying the rules of international law and the rules prescribed by the protocol of submission and, because in the estimation of the Hague Court the umpire did not apply these rules, his decision was set aside.

No words are perfect; but for one hundred years the words "justice and equity" have been construed and their meaning settled at least to this extent, that they do not give unrestrained license or unrestricted liberty to depart from the ordinary rules of law. It is submitted that these words are as well seasoned as any words we are likely to find. In the realm of international law they have acquired a meaning through user in something of the same way, although not of course to the same degree, that, in our constitutional law, the phrase "due process of law" has taken on definition through long custom and many judicial decisions.

The precise words in the recent treaties were "law or equity" instead of "justice and equity" and if there is any distinction between the words "law" and "justice" the word "law" would seem to be clearly the more restrictive of the two. So I submit that it is reasonably well settled, settled as well as we can expect anything to be in the realm of international law, that these words, if adopted, would not give to the tribunal unrestricted license to disregard the known and accepted rules of law.

THE CHAIRMAN. Is there any further discussion? If not, we will proceed to the next paper, "The Codification of the Laws of Naval Warfare," by Rear Admiral Stockton.

Address of Rear Admiral Charles H. Stockton, President of George Washington University,

on

The Codification of the Laws of Naval Warfare.

With the proposition for the establishment of an international prize court, the convention concerning which having been duly accepted and ratified by the United States, it becomes more and more evident that the laws, codes and customs concerning sea warfare should be collected, codified and stamped with international authority, so as to be in readiness for use by the proposed established international prize court at its first assemblage. So evident has this become that Great Britain before ratifying the convention of the Second Hague Conference establishing such a court, deemed it essential that a code should be created preliminary to the ratification of the convention and hence called in 1908, an international naval conference, consisting of the principal sea Powers, to meet at London, from which conference has proceeded the now well-known "Declaration of London." Great Britain at present holds this Prize Court Convention in abeyance until the Declaration of London governing the procedure, and announcing the international maritime law that is applicable, could be accepted as the governing law. On the other hand the United States, while a signatory Power to the Declaration of London, held the code in abeyance in order to first ratify, as she has done, the convention establishing the International Prize Court with its modifying protocol. Both the code and the prize court have now been ratified.

The codification of sea laws, sea customs and sea warfare is however no new thing. Maritime life has been a matter apart from ordinary life from time immemorial and its customs and laws have been peculiarly laws of their own kind. Even to this day those who follow the sea enter into a life which is almost international in its sphere and the "saving grace of salt water" is found through a great portion of the charted and uncharted international law of the day. Nothing can be more common and more international than the sea itself, and it is not to be wondered that the free masonry existing among those who follow the sea in all its vicissitudes dwarfs national lines and renders those who live only within the rigid boundaries of a separate state almost provincial by comparison.

The conditions of sea life and sea trade in the earliest days formed

three great maritime codes, the sea laws of Oléron, embodying the usages of the seamen of the Atlantic; the sea laws of Wisby, embodying the customs of the North Sea and the Baltic, and finally the Consulate of the Sea, the collection of the customs and judgments of those who followed the sea in the Mediterranean. These codes date back to the 14th and 15th centuries and were the result of either judgments of courts or agreements of bodies of merchants and ship owners or both.

The edition of 1494 of the Book of the Consulate of the Sea, the best published one existing, contains first a code of procedure issued by the Kings of Arragon for the guidance of the courts of the Consuls of the Sea, secondly a collection of ancient customs of the sea, and thirdly a body of ordinances for the government of vessels.

From the time of these early codifications until very recent times no codifications of sea customs or warfare has been again attempted. Other codifications of international law however have been made, in most cases by private persons or associations. These have been codes embracing the whole subject of international law or codes of land warfare alone or, under the Geneva conferences, codes referring to the care of the sick and wounded and as to the status of those who are charged with their care.

With some personal experience as to private and international codification, I can say that there is much to be said in the way of commendation for both attempts. Such rules are, to say the very least, in private attempts, elements to be considered in the final make-up, if there should be such a thing as final words in these matters. But all private attempts and codes issuing from one nation or person are unilateral in force or opinion and in so far, restricted in scope and authority. The formation of a code of naval warfare especially should be under international auspices, as the subjects contained therein are international and there should be no limitation as to language, or to application. It should not be pan-American any more than it should be pan-African, or pan-European or pan-Asiatic.

To return to our subject—i. e., of naval warfare—the limitations of which allow us to give only a passing attention to general codifications of international law which would contain within their boundaries, of course, the laws of naval warfare. The more prominent of these are the codes of Bluntschli, in 1868, David Dudley Field, in 1872, Prof. Fiore, in 1890 (with a fourth edition in 1911), and the

elaborate work of Jerome Internoscia in 1911. There are in the purely military code of the laws of warfare on land, a number of matters that apply alike to land and sea warfare, on such matters as prisoners, spies, cartels, the requirements of humanity, etc., etc. Such common material is found in Dr. Francis Lieber's laws of war, in the code of the Institute of International Law for the laws of land warfare in 1873 and 1880, in the Declaration of Brussels of 1874, and in the Convention with respect to the Laws and Customs of War on Land of the First and Second Hague Conferences in 1899 and 1907.

Oppenheim, in the second edition of his work on *International Law*, says:

> Shortly after the Hague Peace Conference of 1899 the United States of America took a step with regard to sea warfare similar to that taken by her in 1863 with regard to land warfare. She published on June 27, 1900, a body of rules for the use of her navy under the title "The Laws and Usages of War at Sea," the so-called U. S. Naval War Code.
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> Although on February 4, 1904, this code was by authority of the President of the United States withdrawn, it provided the starting point of a movement for codification of maritime international law. No complete naval war code agreed upon by the Powers has as yet made its appearance, but the Second Hague Peace Conference of 1907 and the Naval Conference of London of 1908-1909 have produced a number of law making treaties which represent codifications of several parts of maritime international law.

I might add to this quotation from Oppenheim that so late as the Naval Conference of London the United States Department of State in its instructions to its delegates embodied the Naval War Code referred to, as the principal matter of the instructions.

Of the various topics coming under the head of naval warfare, those contained in the following declarations and conventions have been treated with sufficient agreement to form component parts for a naval code to be more or less modified in a final formation:

1. The Declaration of Paris.
2. The convention respecting the laws and customs of war upon land. (First and Second Hague Conferences.)
3. The convention for the adaptation to maritime war of the principles of the Geneva Convention. (Second Hague Conference.)
4. The convention relative to the opening of hostilities. (Second Hague Conference.)

5. The convention relative to the status of enemy merchant ships at the outbreak of hostilities. (Second Hague Conference.)

6. The convention relative to the conversion of merchant ships into war ships. (Second Hague Conference.) Not accepted by United States.

7. The convention relative to the laying of automatic submarine contact mines. (Second Hague Conference.)

8. The convention respecting the bombardment by naval forces in time of war. (Second Hague Conference.)

9. The convention relative to certain restrictions with regard to the existence of the right of capture in naval war. (Second Hague Conference.)

10. The convention relative to the creation of an International Prize Court. (Second Hague Conference.)

11. The convention concerning the rights and duties of neutral Powers in naval war. (Second Hague Conference.)

12. The declaration prohibiting the discharge of projectiles and explosives from balloons. (Second Hague Conference.)

13. The Declaration of London.

This leaves the following questions unsettled concerning which agreements should be attempted in order to complete a naval code of sea warfare.

1. The subject of the conversion of merchantmen at sea or in neutral ports into men-of-war. A reconversion to merchantmen from the status of war vessels.

2. The status of aliens engaged in sea trade in the enemy's country.

3. The status of neutral vessels engaged in war time in a trade forbidden them in time of peace. This includes cabotage and petit cabotage. (Rule of war of 1756.)

4. The use of false colors in war time by belligerent vessels of war.

5. The use and treatment of telegraphic cables in war time.

6. The immunity from capture of private property at sea.

7. The formation of a volunteer navy. Privateering.

8. The extension of immunities from search and detention of neutral mail steamers in war time.

9. The extension of the width of the marginal sea belt or the marine league.

10. The recognition and status of insurgent vessels of war at sea.

11. The rules of the visits of belligerent vessels of war in neutral ports. Their internment, their coaling and the extent of their periods of return.

12. The definite period allowed to an enemy ship in port at outbreak of war or declaration of blockade—days of grace.

13. The status of pacific blockade in regard to merchant vessels of Powers not immediately concerned.

(1) In regard to the conversion of merchantmen anywhere upon the high seas, there is very considerable difference of opinion existing between the various great sea Powers according to their assumed interests in the matter. In a general way the subject is of more importance to countries having a large merchant marine and but few ports. Such a conversion can be made to be very irritating when a belligerent vessel uses neutral ports as a merchantman until she arrives near a point or time where it is desired to strike at the trade of its opponent. Then leaving its neutral port as a merchantman it is converted into a man-of-war without any knowledge or warning to the outside world and hunts its prey. The conversion of the *Alabama* into a Confederate man-of-war after leaving Liverpool is a case in point, which served to create and keep alive a feeling of injury sustained for many years until settled by the Geneva Conference and the Alabama Award. Possibly some middle ground can be found by an announcement of intention of conversion upon leaving a home port, but so far no agreement has been reached either at the Second Hague Conference or during the Naval Conference at London. Even the compromise offered by the Italian delegation at the Second Hague Conference allowing the conversion upon the high seas to merchantmen who leave their territorial waters before the outbreak of war found a divided body: Great Britain, the United States, Belgium, Brazil, Italy, Japan, Norway, Holland and Sweden for, and France, Germany, Austria, Argentine, Chile, Russia and Servia against such restriction. There seems little justification to be offered in regard to a conversion in a neutral port as it is an operation evidently not in accord with neutrality.

(2) The question of the status of aliens engaged in sea trade in a belligerent country is not an important one except that it should be decided one way or the other. The United States holds that the character of such a trader is determined by his domicile, while Ger-

many maintains the position that it is determined by his national character.

(3) The third point brings in the force of the rule of the war of 1756 as applied to coastwise or insular trade. The coastwise trade is divided by the French classification into *cabotage* and *petit cabotage*. By *cabotage* is designated the trade between the home country and other over-sea ports like between Havre and Marseilles, while *petit cabotage* is the sea trade between ports on the same stretch of coast. The expression coasting or coastwise trade has however been given another extension or interpretation by the United States. Russia and Great Britain have confined their definition of coasting or coastwise trade to extend to various seas, provided the ports are in the country which is a political and geographical unit, and as there is only one stretch of territory between St. Petersburg on the Baltic and Vladivostock on the Pacific, that trade came within the definition of coasting trade or cabotage as the French would call it.

The United States, however, not only calls the trade between New York and San Francisco by the way of Cape Horn as coasting trade, but also by the way of Panama by rail before the completion of the Panama Canal and in the face of a land transit and re-shipment of the cargo. At a later date, in 1898 and 1899, the United States of America further declared sea trade between any of her home ports and those of Porto Rico, the Philippines and the Hawaiian Islands to be coasting trade and hence reserved by law to American vessels exclusively. This practically makes coasting trade and colonial trade conform to the trade affected by the rule of the war of 1756, which asserts that in time of war neutral vessels engaging in this trade, denied to them in time of peace, are subject to capture for unneutral service. This rule we have not accepted and do not accept, but Great Britain revived it at the London Naval Conference as in force. Several delegations, the United States of course among them, rejected the proposal and the second paragraph of Article 57 of the Declaration of London treats of the subject as follows:

> The case where a neutral vessel is engaged in a trade which is closed in time of peace remains outside the scope of, and is in no wise affected by this rule.

Thos. J. Lawrence of this says:

Great Britain, backed by several important maritime Powers, still holds that if a belligerent throws open in time of war, to neutrals, a coasting or colonial trade which is confined to its own subjects in time of peace, its foe may treat all neutral merchantmen who take advantage of the permission as enemy vessels. Another group of Powers, headed by the United States, holds strongly to the contrary opinion, and unless a settlement is soon reached the question may become acute and dangerous in a great maritime war.

(4) The use of false colors is forbidden in time of war in land warfare and should not be permitted in sea warfare. The ethics in this case differs from the sea usage and conforms to land warfare.

(5) The use and treatment of submarine cables in war time can, I think, be readily agreed upon at an international conference.

(6) Following the Naval War Code of the United States as to an agreement as to an immunity from capture of private property at sea I am not so confident. It is hardly worth while to discuss the matter here and now even if time permitted. The division as to national opinions is practically equal.

(7) The formation of a volunteer navy in time of war is treated with the question of privateering and that of conversion of merchantmen into men-of-war and would be facilitated by an adoption of the Declaration of Paris formally on our part.

(8) The interference with neutral mail steamers in time of war is becoming more and more vexatious to those concerned as time goes on. It is quite probable that an immunity from seizure and taking into port will become generally acceptable except in grave cases or extensive carriage of contraband or of course an attempted evasion of blockade.

(9) The extension of the width of marginal sea belts is a matter to be considered favorably with the increasing range of guns and with regard to cases of smuggling followed by hot pursuit by revenue vessels.

(10) The status of insurgency is becoming more and more tangible and should be followed by the recognition of insurgent vessels afloat as having belligerent rights and not as pirates.

(11) There should be more uniformity in the rules governing the visits and the duration of the stay of belligerent vessels of war in neutral ports, also as to the rules for the use of such ports and the

length of periods between coalings. The variance between the English and French practice was very great during the Russo-Japanese war, and became a matter of moment to the Russians.

(12) The days of grace allowed to merchantmen of an enemy at the outbreak of war should be more uniform.

(13) The status of the pacific blockade with respect to quasi-neutral vessels is one that should be determined and the differentiation of pacific and warlike blockades well established. The position of the United States is well known in this matter. It considers a pacific blockade as effective alone against the nation upon whose ports it is brought to bear, and that the so-termed neutral shipping is not susceptible to the restrictions placed upon a vessel of the blockading or offending Power. For this reason the Venezuelan blockade was forced by our well-known views from a peaceable status to that of a warlike one.

From what I have stated in this paper I think that it is not unreasonable to hope and expect that at the next Hague Conference the beginning of a codification of the rules of naval warfare may be begun. It is to be presumed that there will be periodical meetings of the Hague Conferences, or, better still, of naval conferences of the great sea Powers, so that revision of this sea code will follow in the successive meetings after a trial which is not unlikely to be had in the occasional, or, may we hope for the future, in the *rare* occurrence of maritime war.

As to the enforcement of the proposed code after the decision is made by the International Prize Court there have been various methods proposed.

Article 66 of the Declaration of London provides that

> The signatory Powers undertake to insure in any war in which all the belligerents are parties to the present Declaration the mutual observance of the rules contained herein. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

Internoscia in his code provides for its enforcement by the formation of an international police force composed of quotas contributed by various nations—of troops, ships and railway trains. Perhaps these two propositions represent the extreme views upon the subject.

A word of perhaps not untimely digression in closing. In my opinion there should be established in addition to an international naval code of laws, an international maritime code for the government of vessels engaged in sea trade, especially those engaged in the trade of carrying passengers.

The carriage of passengers has grown to such a degree by the facilities of sea communication as to almost rival land carriage of passengers over distances.

It is true that the vessels engaged in such trade represent territory of the flag they carry, but these vessels ply between ports of different nations and carry passengers representing almost every civilized and semi-civilized country in the world. While under the municipal law of their own country, in ownership, in cargo, and in their passengers, the interests connected with them may be and very often are absolutely international or at least of a closer nature to other nations than that of their own origin and flag. Especially is this the case with the trans-Atlantic vessels coming to our own ports. Our citizens, either actual or prospective, outnumber all others carried, and reasons of humanity, as well as the self-interest of all concerned, should give the matter an international status and the laws governing their safety should be based upon international treaty and action.

Such sea traffic should be regulated so that vessels should not run into known danger at a high rate of speed, that sufficient number of boats be carried to carry all souls on board, that a long period of time should not be taken to lower boats in favorable or unfavorable circumstances, and that such boats should not be undermanned as to seamen, and be without proper principal and petty officers to take charge. Seconding Mr. Wheeler's suggestions of last evening, it is proposed that action should be taken by this Society, as it properly can be, asking our national legislature and general government to call for such purposes an international conference for the formation of an international code to protect the many who entrust their lives upon the great deep.

The CHAIRMAN. The paper is now open for discussion. If there is none, we will proceed to the paper of General George B. Davis, on "The Effects of War upon International Conventions and upon Private Contracts," which will be read for him in his absence.

Address of Major General Geo. B. Davis, U. S. Army,

on

The Effects of War Upon International Conventions and Private Contracts.

THE EFFECT OF WAR UPON PUBLIC TREATIES.

In seeking for an answer to the question here presented it will be well to state, briefly, one of the first effects of war upon the relations and intercourse of the belligerents and their citizens or subjects, and that effect is to establish a status of absolute non-intercourse. This continues to exist from the declaration of war until the conclusion of peace, or the establishment of a preliminary armistice. No rule of international law is more clearly understood, or more generally adopted and practised than this; it has the sanction of immemorial usage, it is enforced by the courts of all nations, and is accepted by all belligerents in the conduct of their military operations. In the practical operation of the rule the only relations between the belligerents, save those which will presently be alluded to, are those of public hostility. In view of the arbitrary and violent character of the operations of war, this rule is an extremely reasonable one, calculated to mitigate the hardships of war and to secure, so far as they can be secured, the personal and property rights of those who are subjected to its operation.

As between the belligerents themselves this status is so complete that it can only be lawfully interrupted in one of the methods recognized by the laws of war for the establishment of such non-hostile relations as may become necessary, from time to time, in the prosecution of their military operations. Truces may be entered into, communications may be established through the instrumentality of flags of truce, safe conducts and licenses to trade may be issued, and, when the fortunes of war have turned decisively in favor of either belligerent, an armistice may be concluded as a necessary preliminary to the negotiation of a treaty of peace.

But few states deliberately place themselves in a belligerent attitude between whom treaty obligations of considerable importance are not in existence at the date of the rupture of friendly relations. These undertakings create mutual rights and obligations and some of them are of such serious importance that their unexpected abrogation would

constitute a serious blow to their prosperity and to the health of the body politic. So the question is what is the fate of these undertakings when the states who are parties to their operation find themselves engaged in war as opposing belligerents. Are they annulled, or abrogated? Are they dormant and without operative force during the continuance of the war, or do some or all of their requirements continue in force as if hostilities had not intervened?

Many authors are of many minds on this subject, and the existing conditions in that regard are fully set forth in the able and interesting treatise of Dr. Oppenheim, one of the most recent and authoritative writers on the general subject of international law. Oppenheim truthfully says on this point:

> The doctrine was formerly held, and a few writers maintain it even now, that the outbreak of war *ipso facto* cancels all treaties previously concluded between the belligerents, such treaties only excepted as have been concluded especially for the case of war. The vast majority of modern writers on international law have abandoned this standpoint, and the opinion is pretty general that war by no means annuls every treaty. But unanimity in regard to such treaties as are and such as are not cancelled by war does not exist. Neither does a uniform practise of the states exist, cases having occurred in which states have expressly declared that they considered all treaties annulled through war. Thus the whole question remains as yet unsettled. But nevertheless with the majority of writers a conviction may be stated to exist.[1]

The most fundamental fact of war is, concededly, the inevitable suspension of all intercourse, public and private, by which it is accompanied. A reasonable application of the rule of non-intercourse would clearly operate to suspend, if not to terminate, all treaty relations between the belligerents. But interstate relations are now so extensive and so complicated that abrogation, or even a suspension of operation of all treaties is simply out of the question. The following clauses of conventional obligation seem to continue in force during the existence of international public war:

1. Treaties in the form of executed contracts, in the operation of which areas of territory, for example, have been ceded by one Power to the other, sometimes as the result of conquest, sometimes by a treaty in the nature of a conveyance. These correspond to convey-

[1]Oppenheim, *International Law*, p. 107.

ances of real estate, and are universally regarded as binding even though the original signatories should subsequently become belligerents. They are sometimes called transitory conventions. The territory acquired from Mexico by the United States in the operation of the Treaty of Guadalupe Hidalgo, in 1848, would unquestionably be regarded by Mexico as a part of the territory of the United States, were the two republics to become belligerents in a future war. Such cases have occurred in the past, especially in continental Europe, and the practise seems to have been for the former sovereign to regard an intrusion into his former possessions as an act of military occupation rather than as an act of sovereignty.

2. Postal conventions governing the rates of postage and the methods of carrying the mails.

3. Treaties establishing or modifying standards of coinage, weights and measures.

4. Treaties that were intended, at the time of their negotiation, to become operative in time of war. To this class belong the Declaration of Paris of 1856, the Declaration of Saint Petersburg of 1868, the Geneva Conventions of 1864, 1868 and 1906, including the adaptation of the requirements of the Convention of 1864 to maritime warfare, which was adopted at the Hague Conference of 1907, and the rules governing the conduct of the operations of war on land, originally adopted at the Hague Conference of 1899, and subsequently modified, in some particulars, by the Conference of 1907 at The Hague. As these only become operative in time of war and are without effect in time of peace, it follows that violations of them by one belligerent would be followed by a resort to coercive measures, in the nature of acts of retaliation, as in the case of other violations of the established rules of war.

5. In view of the numerous conferences and congresses that have taken place in the last fifty years, and of the important part that some of them have played in international affairs, it is not too much to hope that their efforts may, at no distant day, assume the character of world legislation. Composed of delegates from the more important nations of the civilized world and representing a constituency composed of sovereign and independent states, they speak in the name of humanity and in the interest of civilization. Thus far these bodies have been more interesting rather on account of the number and character of their membership than by reason of the work accomplished; but

more general and important results may be expected in the not distant future, as the states represented realize the necessity of legislation in respect to certain phases of international intercourse—especially in matters concerning the international status of individuals.

Are there any treaties, the suspension or abrogation of which takes place, as a matter of course, at the outbreak of war between the signatory parties? In this class we find mention made of the following cases:

1. Treaties of alliance. Such an undertaking is so inconsistent with a state of actual hostility that it necessarily falls to the ground. If one state only is a party to an alliance, to which the other belligerent is a stranger, the question before the signatory would be whether, in view of the existence of the war, and the consequent drain upon his military resources, he continues able to perform his duties as a member of the alliance. With this, of course, the other belligerent has no concern.

2. Customs and revenue treaties. As the business of importation ceases at the outbreak of war, obviously the treaty stipulations under which it is carried on would equally cease. It is conceded that it might be to the interest of one belligerent to allow certain lines of trade to continue, covering them, if need be, by licenses to trade; but such intercourse would be part of the *commercia belli* which is recognized by the laws of war, and would not grow out of or be created by the treaty.

It would thus appear that, if he will, a belligerent may regard all treaty obligations with the enemy as inoperative, from the date of declaration of war, or its actual outbreak. This in pursuance of the universally recognized requirement of the law of nations that operates to interdict intercourse of every kind between belligerents and their subjects. Assuming that the rule of intercourse above stated is for the benefit of a belligerent, he may waive its operation in any case in which such waiver will operate to his advantage, or to the embarrassment of the enemy, or which will tend to minimize the hardships of war, to diminish the extent of its operation or contribute to its humane conduct.

In this case, as in that first mentioned, one looks in vain for a basis for the practice of permitting certain treaties or clauses of treaties to continue in force during a war between the belligerent signatories. It is equally vain to attempt to state a usage or practice in either regard to which a belligerent would be likely to resort in time of war.

It is similarly difficult to determine from actual practice, in time of peace, whether a clause which has been suspended in time of war, does or does not come into operation, by its own force, at the conclusion of peace. There is a reason for the variance in practice in this regard. Treaties are of all ages, in point of date, and differ widely in practical importance and frequency of application. Some may be so nearly obsolete as to warrant their being regarded as of too little real importance to be revived in a treaty of peace. The negotiators of a treaty of peace may also be of the opinion that there is a revival, that is that treaties were in fact, suspended during the war, but revive with the treaty of peace and, both being of the same mind, the matter is omitted from the text of the treaty. It should be remembered, also, that the parties to a treaty of peace are not on a footing of equality; and however much the vanquished party may desire to obtain recognition for certain treaties, he will be unable to secure such recognition against the will or desire of his successful antagonist.

The cases usually cited indicate a wide variance in practice in the mention of previous treaties in the treaty of peace. The Declaration of Paris, which terminated the Crimean War in 1856, contained a qualified recognition of *ante bellum* treaties. In one the treaties at the close of the Italian war of 1859, two of the belligerents restored operative force to all treaties in force at the outbreak of the war; the treaty between the other two belligerents was silent as to such revival, although the treaty relations between them had been not only numerous but important. The Treaty of Prague at the close of the Austro-Prussian War of 1866, contained a clause of revivor, while that which closed the Franco-Prussian War in 1871 revived a part only of the existing stipulations between France and Germany.[2] After the Russo-Japanese War in 1904 there was no confirmation or revivor of treaties in force at the outbreak of the war.[3]

Before a rule can be stated in this regard it will be necessary for it to be authoritatively determined whether all treaties between the belligerents are terminated by the outbreak of war. As to this it has been seen that there is no generally accepted rule and, in the absence of a rule, no uniform practice. If treaties are terminated, there is, of course, no question of their revival. If they are merely suspended, then the question arises as to the manner in which the revivor is accomplished; does it follow automatically upon the conclusion of the

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[2]Hall, *Int. Law* (fourth edition), 451. II Oppenheim, 289.
[3]II Oppenheim, 107.

treaty of peace, or is it necessary, in order to restore their operative force, that the suspended instruments should be mentioned in the treaty? As the treaties are restricted in their operation to the belligerents alone, other states have no real concern as to whether there is or is not a revival.

The states most closely interested in the existence and operation of the treaties may be relied upon to reach their own determination of the matter. If great importance is attached, not only to the fact, but to treaty procedure between the belligerents, the case of suspended conventions will probably be covered in the treaty of peace; if they are but feebly interested in the subject, regarding the stipulations as being without present or even prospective importance, they will probably be omitted, leaving the field of treaty stipulation in that regard to be covered as questions arise in their relations calling for an exercise of the treaty-making power.

PRIVATE CONTRACTS.

The term "private contracts," as here used, and as employed generally in international law, obviously has a somewhat broader meaning than is conveyed by its mere name, or than is given to it by courts who have power conferred upon them by law to pass upon questions of contract. The term would seem to include partnerships and all business transactions between individuals or corporations, in addition to those that are evidenced by writing, either as simple contracts or as specialties under seal. Vattel, who never fails in point of clearness, says:

> When Alexander by conquest, became absolute master of Thebes, he remitted to the Thessalians a hundred talents which they owed the Thebans. The sovereign has naturally the same right over what his subjects may owe to enemies. He may therefore confiscate debts of this nature, if the term of payment happen in time of war; or at least he may prohibit his subjects from paying while the war continues. But at present, a regard to the advantage and safety of commerce has induced all sovereigns of Europe to act with less rigor in this point. And as the custom has been generally received, he who should act contrary to it would violate the public faith; for strangers trusted his subjects only from a firm persuasion that the general custom would be observed. The state does not so much as touch the sums which it owes to the enemy; money lent to the public is everywhere exempt from confiscation and seizure in case of war.[4]

[4] Vattel, Liv. III, Chap. VI, p. 87.

Hall says in his statement of the existing rule:

To say that war puts an end to all non-hostile relations between the subjects of the enemy states, and between the subjects of one and the government of the other, is only to mention one of the modes of operation of the principle, which lies at the root of the laws of war, that the subjects of enemy states are enemies. The rule is thus one which must hold in strict law in so far as no exception has been established by usage. Logically it implies the cessation of existing intercourse, and the right on the part of a state to expel or otherwise treat as enemies the subjects of an enemy state found within its territory; the suspension or extinction of existing contracts according to their nature, among extinguished contracts being partnerships, since it is impossible for partners to take up their joint business on the conclusion of the war at precisely the point where it was abandoned at its commencement; a disability on the part of subjects to sue or be sued in the courts of the other; and, finally, a prohibition of fresh trading or other intercourse and of every species of private contract. Of late years it is seldom that a state has exposed itself, together with its enemy, to the inconveniences flowing from a rigid maintenance of the rule of law; but the mitigations of it which have taken place have generally been either too distinctly dictated by the self interests of the moment alone, or have been too little supported by usage to constitute established exceptions.[5]

Oppenheim, one of the most recent writers on this subject, dissents broadly from other authors and takes the view that "such a rule of international law does not exist and has never existed, as international law has nothing to do with the conduct of private individuals, but is a law between states only and exclusively."[6] Later he says, after asserting that the rule of law on this subject is one of municipal rather than international law:

No case of confiscation has occurred during the nineteenth century and, although several writers maintain that according to the strict law the old rule, in contradistinction to the usage which they do not deny, is still valid, it may safely be maintained that it is obsolete, and that there is now a customary rule of International Law in existence prohibiting the confiscation of private enemy property and the annulment of enemy debts on the territory of a belligerent. Accordingly, the embargo of enemy ships in the harbors of the belligerents at the outbreak of war is no longer made use of, and a reasonable time is granted to them to leave those harbors. On the other hand, this rule does not prevent a belligerent from suspending the payment of enemy debts till

[5]Hall, *Int. Law* (fourth ed.), Part III, Ch. I, Sec. 126, p. 405.
[6]II Oppenheim, pp. 110, 111.

after the war for the purpose of prohibiting the increase of enemy resources; from seizing public enemy property on his territory, such as funds, ammunition, provisions, and other valuables; and from preventing the withdrawal of private enemy property which may be made use of by the enemy for military operations, such as arms and munitions.[7]

Here, as in the case of conventional obligations, we are not at a loss for a definite rule. The conversion of the subjects of the belligerent parties into legal enemies, as the result of the outbreak of war, tends to simplify the discussion of this branch of the subject. In the operation of the rule the citizens of the opposing belligerent become enemies, their property becomes enemy property and, as enemies, they cease to have standing in the courts of the opposing belligerent. During the continuance of the war they may not sue in the courts of the hostile state, or invoke the application of remedies to which citizens of that state and, in certain cases, even aliens are entitled; and all contractual undertakings, those in existence at the outbreak of the war, as well as those subsequently incurred, fall within the operation of the rule and become legally inoperative, unless approved, or recognized by the belligerent in whose favor the rule operates and who, for that reason, may waive its operation in particular cases.

But there is another point from which the question of private property and private contracts may be viewed. The protection afforded to private property in time of war, which has been steadily increasing both in extent and amount for more than a century, has been so broadened, in the operation of the conventions of 1899 and 1907 at The Hague, as to give the ancient protection the character of a complete immunity. The Convention of 1907 provides that:

> Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property can not be confiscated.[8]

In paragraph (h) of Article 27, as amended by the Conference of 1907, an additional security will be found. Its insertion was suggested with a view to its performing the function of a legislative interpretation of some of the stipulations of the Convention of 1899. It may be feared that, like other legislative interpretations, it will itself stand

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[7] II Oppenheim, pp. 111, 112.
[8] Scott, *The Hague Conferences of 1899 and 1907*, Vol. II, p. 757.

in considerable need of construction when it is attempted to give it practical application in time of war. This much may be said, however, that it was the desire of the Conference to give conventional form to a clause which was conceived entirely in the interest of the non-combatant enemy residents of territory in belligerent occupation in time of public war. The clause provides that:

> In addition to the prohibitions provided by special conventions, it is especially forbidden: * * * (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.[9]

It would thus appear that, where the old rule ends, forbidding contractual intercourse, the new one begins, extending to enemy citizens a complete immunity from pillage or spoliation in respect to their real and personal property, including all those incorporeal things which, by the law of each state, are recognized as having the character and incidents of property.

The CHAIRMAN. The Society will now be pleased to hear the paper of Mr. Thomas Willing Balch, of the Philadelphia bar, on "The Marine Belt and the Question of Territorial Waters."

ADDRESS OF THOMAS WILLING BALCH, ESQ., OF THE PHILADELPHIA BAR,

on

THE MARINE BELT AND THE QUESTION OF TERRITORIAL WATERS.

Owing to the gradual increase in the range of modern artillery, the need and demand for a revision and extension of the territorial sea is becoming year by year greater. If, however, on account of belligerent operations, the limit of the territorial sea is extended, the international fishing grounds are thereby correspondingly curtailed to the detriment perhaps of a large part of the fishing interests of the world. Would it not be for the general interest of nations then, that the question of enlarging the coastal sea for belligerent purposes, should be considered separately and apart from the extent of the marine belt for fishing and other commercial uses?

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[9]Scott, *The Hague Conferences of 1899 and 1907*, Vol. II, p. 389.

If we glance at the long struggle in favor of the freedom of the sea, it becomes apparent that the general trend of international law has been until recently to cut down more and more the exclusive possession of any nation or group of nations to any part of the water enveloping the land.[1]

Thus after the general proposition that the high seas are free had become universally accepted, with the exception of a margin along the sea coast of each nation, this belt of territorial waters came gradually to be recognized in general as extending three miles from shore.

Great Britain, however, having defeated Spain and France on the sea and the naval power of Holland having declined, so that Great Britain had become in a real sense the mistress of the seas, she continued to claim for some time dominion over much larger areas of the salt water than most of the other members of the family of nations. Great Britain was largely impelled to maintain this mediæval policy of exclusion by the configuration of her coast line as compared with that of other European nations. In the case of bays, there gradually grew up the rule among the nations of the world that the three-mile belt of territorial waters should be measured from a line drawn where the distance from shore to shore was six miles across, that is, double the width of the territorial sea. If the line where first such sinuosities are six miles across is taken as the base line from where to measure the three miles of territorial waters seaward, it leaves within the control of most of the European continental states almost all of the really essential land-locked waters, including the Zuider Zee for Holland. Such, however, is not the case for Great Britain. With her such bays as the Bristol Channel, the mouth of the Thames, the Wash, the Firth of Forth, Moray Firth, Dornoch Firth, and many other estuaries of the sea are much more than six miles across from shore to shore, and, therefore, would not be included entirely by the six-mile line within the area of territorial waters. Thus Great Britain long continued to claim exclusive jurisdiction over the waters along her sea coast within a line drawn from headland to headland, and also over the "narrow seas" surrounding her, such as St. George's Channel. But in accord with the universal movement among the nations of Europe to recognize the freedom of the sea, she has given up, as the distinguished patriarch of international jurisconsults, Dr. Westlake,[2] has pointed out,

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[1] J. de Louter, *Het Stellig Volkenrecht*, The Hague, 1910, p. 376, *et seq.*

[2] John Westlake, *International Law*, Cambridge University Press, 1910, 2d ed., Vol. I, p. 192.

the doctrine of the headlands. She has relaxed also, by degrees, at least tacitly, her former assertion of exclusive control over the waters, for instance, of the North Channel. And while Sir Robert Phillimore,[3] a half century ago claimed for her the Bristol Channel as a territorial sea, Dr. Oppenheim of Cambridge University is doubtful about upholding that view,[4] and Great Britain has given up specifically her absolute former claim over all the waters of Moray Firth. Thus in harmony with the general trend of modern opinion and custom to recognize the sea more and more as open to all comers, the policy of Great Britain as regards the limits of the territorial sea in the case of bays and other indentations of the sea advancing into the land, has gradually become more liberal as regards European waters. But in the case of American waters, as her claim over the waters of the Bay of Conception in Newfoundland which is fifteen miles or more wide shows, she would seem to cling to the theory of the Middle Ages of asserting control over as much of the sea as possible.[5]

In the New World the young American Republic, which very soon after entering the membership of the family of nations announced her acceptance of international law, recognized the freedom of the sea, and never put in practice the broad claims of the headland doctrine urged upon her by James Kent.[6]

Of late years, however, a tendency has developed among many nations to attempt to re-annex large tracts of the high seas on the plea that they are entitled to exclusive control over all the waters of certain seas or large bays that penetrate into their own land. This may be called the "historic bay" doctrine. This fairly modern attempt to extend the limits of territorial waters in the interest of individual nations, should be watched with care. For it is wonderful, to say the least, how suddenly the so-called "historic bay" doctrine is claimed to apply to some sea or great bay that previously all the world has looked upon as forming a part of the open sea. And if one or two great seas are excluded in the future from the category of the open sea, why not

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[3]Sir Robert Phillimore, London, 1879, Vol. I, p. 276.

[4]L. Oppenheim, *International Law*, London, 1912, 2d. ed., Vol. I, p. 266.

[5]John Westlake, *International Law*, London, 1912, Vol. I, p. 192; L. Oppenheim, *International Law*, London, 1912, Vol. I, p. 266.

[6]*North Atlantic Coast Fisheries Arbitration*, Argument of the United States, Chandler P. Anderson, Agent, Washington, Government Printing Office, 1910, p. 219.

then many others? That would be a return to the narrow and exclusive policy of the Middle Ages which sanctioned the closing of the Adriatic for example.

Another modern encroachment on the area of the high seas is the ten-mile rule in deciding in the case of bays where the marine belt shall be measured outward towards the open sea. Professor John Bassett Moore, of Columbia University, has forcibly pointed out that the reason for the adoption so often of the ten-mile line has been a practical one in the interest of the foreign fishermen. The adoption of the ten-mile rule "is not to hamper or restrict the right to fish, but to render its exercise practicable and safe."

In the Anglo-French treaty of 1839, it was agreed that the base line from where the three miles seaward should be calculated should be where the distance from shore to shore measured ten miles. The ten-mile line was reaffirmed between the same two Powers in the treaty of May 24, 1843, and again in that of November 11, 1867. It was sanctioned in 1868 by Great Britain and the North German Confederation, and in 1874 by Great Britain and the German Empire. It was further adopted by the treaty of May 6, 1882, between Great Britain, Belgium, Denmark, France, Germany and Holland regulating the police of the North Sea fisheries. In this agreement, however, Norway did not join. Great Britain sanctioned the ten-mile rule by an Order in Council of October 23, 1877. It was also adopted in the unratified Bayard-Chamberlain Convention of 1888.[1] The ten-mile line is not a universally recognized rule, though so notable a jurist as the Swiss-Belgian Rivier, accepts it as such. But as we have seen above, it has been adopted and approved on many occasions, and if discussed for legislative enactment at a future Hague Peace Conference, would probably be sanctioned by the Powers of the world. It may be said that the ten-mile rule is in process of displacing and superceding the six-mile rule.

The three-mile limit as the extent of the territorial sea afforded, from the eighteenth century until about the close of the American Civil War in 1865, sufficient protection to the coast of neutral nations against the fire of belligerent war ships in action. But the conditions in this respect have changed radically from half a century ago. The gradual increase in the carrying power of artillery during the last fifty years

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[1] J. I. Doran, *Our Fishery Rights in the North Atlantic*, Philadelphia, 1888.

has made the three-mile distance totally inadequate as a means of keeping belligerent vessels in action out of range of the shore of neutral Powers. Thus the territorial sea, in its most generally accepted feature, the three-mile belt, has outgrown, in part, its general usefulness. This fact has been largely recognized by statesmen and publicists,[8] for example, by our distinguished guest, Senator Fiore. In 1894 the *Institut de Droit International* recommended an extension of the three-mile strip of territorial waters to six miles. In the case of bays, the *Institut* advocated that all sinuosities whose entrance from the sea measures twelve miles or less across from shore to shore are to be considered as territorial waters in their whole extent. In addition, the *Institut* at the same time declared that in war times neutral riparian states should have the right to extend by formal declaration the limit of the zone of their neutral waters as far as the range of their cannons extended from the shore.

It seems clear that during a war, in order to afford to the coast lines of neutral nations adequate protection against damage from a battle between the ships of the belligerents, the extent of territorial waters should be increased from three miles to six and perhaps even more. The need for such a change becomes apparent from the fact that modern guns can throw a shell now from a battle ship a distance of about fourteen miles, and with the perfection and improvement of artillery, doubtless in the future a large gun fired from a vessel will be able to throw a projectile across a distance greater than the width of the Straits of Dover, which are eighteen miles wide at their narrowest point. Suppose a naval battle took place in those straits during a war, midway between the riparian lands, between two Powers other than France and Great Britain, the shells of hostile vessels could easily be hurled unintentionally into the neighboring lands, destroying perhaps both people and property. It is true that a battle may occur on land so close to the frontier of a neutral Power that stray bullets of the combatants will kill people on the territory of the neutral state. This happened along the American-Mexican frontier during the civil strife in the latter country in the earlier part of the year 1911. The neutral nation in such a case on land cannot interfere in the struggle with its military forces in order to compel the troops of the belligerents to conduct their operations at such a distance from its own neu-

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[8] Ernest Nys, *Le Droit International*, Brussels, 1912, 2d ed., Vol. I, p. 555.

tral territory as to leave its own citizens safe from the missiles of the combatants, without losing its own neutral character owing to its invasion of the territory of at least one belligerent. But within the extent of the territorial sea, a neutral nation not only has the right to prevent the war vessels of belligerent Powers from engaging in hostilities, but even it is its duty as a neutral towards all belligerents to prevent an engagement from being begun and fought within its own neutral territorial waters. In that way a naval battle can at present be removed three miles from shore. In 1864, when the U. S. S. *Kearsarge* was steaming to and fro off Cherbourg, waiting to fight the Confederate commerce destroyer *Alabama,* the French Government sent out from Cherbourg one of its war vessels, the *Gloire,* to accompany the *Alabama* to a point beyond the three-mile limit, to insure that the battle would take place at a sufficient distance from the shore so that the shots of the combatants could not cause damage to people or property on the land.[9] This action on the part of the French Government seems to have been amply justified, since it placed thereby no undue hardship on either belligerent nor infringed in any way their sovereign rights. Doubtless today any neutral nation with sufficient naval power at hand would not allow two belligerent nations to fight a naval battle within striking distance of its own neutral shore, facing the open ocean. The moral rights of neutrals to protect their people and material possessions from damage through the possible hostile operations of the war vessels of belligerents too close to neutral territory, should receive the sanction of the nations of the world through their representatives gathered at a future Peace Conference at The Hague.

On the contrary, however, for commercial purposes generally there is no overpowering reason why the marine belt of territorial waters should be enlarged so quickly. Especially in the interest of the fishermen of the world, an extension of the territorial sea is perhaps not desirable. To enlarge the coastal territorial fringe by even only one mile, as Sir Thomas Barclay[10] has pointed out, would cut down very much, for instance in the North Sea, the area open to *all* fishermen, and if that territorial fringe were increased to five or six miles or an

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[9]Geo. G. Wilson, Naval War College, *International Law Situations,* 1904. Washington, 1905, p. 132, *et seq.*

[10]Sir Thomas Barclay, *Problems of International Practice and Diplomacy,* London, 1907, p. 111.

even greater distance, the international fishing grounds would still further be encroached upon and this encroachment would be in a progressive ratio. The sea is free to the vessels of all nations, subject of course to the rules of navigation, to come and go as they please for the purposes of trade with all parts of the earth, and except for the territorial sea, to hunt and fish for the inhabitants of the salt water envelope of the continents. Consequently, with the sea free and open to the vessels and commerce of all states, some nations are not shut out by the exclusive possession by other Powers of parts of the ocean. This freedom of trade upon the high sea makes for the peace of the world, for it allows all nations to participate freely and equally in the quest for the various treasures of the sea. And that peaceful result can best be attained and continued by not extending the territorial sea too much for commercial and peaceful purposes.

Since there are two different interests involved in the extension of the territorial sea, why not separate the discussion of the subject into two parts—one as affecting the safety of nations and the other their commercial interests—and decide each upon its own merits for the best general interest of all the nations of the world.

The belligerent phase of the extent of the territorial sea could be examined and revised by the delegates of the nations at the Third Peace Conference, that will probably gather at The Hague in three or four years. In that way the desired extension of the territorial sea to such an extent as to safeguard, in war times, the land of neutral states from the operation of the war vessels of the belligerents could be obtained, without in any way touching and altering in other respects the rights and status of nations over any of the present area of the open sea.

The commercial phase of the territorial sea, freed of the question of belligerent operations, could be discussed and if necessary, altered more easily for the benefit of mankind, so as to insure proper protection, for example, to the fishing industries of the world. It has been clear for some years that if the fur seals of Bering Sea and the North Pacific Ocean are not to be exterminated as the American bison were, but preserved for humanity, the rights of nations according to generally accepted international law, as interpreted in 1893, by the international court that sat at Paris, must be amended as regards that particular case. And the Powers actively interested in the fur seals of Bering Sea and the North Pacific Ocean have, by agreement among

themselves, suspended for a period of fifteen years their respective rights to kill seals in the parts of those two bodies of water that belong to the high seas. It may be requisite, for the same reason, for all the nations to recognize the four-mile limit claimed by Norway for the protection of the fisheries along her own coast. It may prove, too, that changes will be necessary in the international regulations governing the fisheries in other parts of the open sea, so as not to exhaust unduly the supply of fish. But such commercial cases as these should be legislated for entirely independently of the rules applicable to belligerent ships in war times. In the same way the subject of what are and what are not territorial bays according to the doctrine of "historic bays" could also be passed upon for all the world at the same time as a commercial question apart from that of the belligerent phase of the territorial sea. For example, the claims that the Dominion of Canada and the Muscovite Empire are beginning to make respectively that Hudson Bay and the White Sea form in their entirety part of the territorial waters of Canada and Russia, should not be decided by the Hague International Court merely as individual cases between the United States and Canada in reference to the legal status of Hudson Bay, and Great Britain and Russia concerning that of the White Sea. For, if looked at from the broad standpoint of humanity, the questions whether those two large seas, as well as other seas and large bays in other parts of the world, are closed seas, have an interest for all nations. The community of interest of all the family of nations should be consulted and recognized in such matters. The legal status of those two large seas could well be discussed and passed upon, together with the limits of the marine belt, including the subject of "historic bays" generally, by the next Hague Peace Congress.

Mr. BORCHARD. It was my privilege at the Fisheries Arbitration at The Hague in 1910 to be brought into intimate relation with the subject of Mr. Balch's paper on territorial waters. The court in that case did not take advantage of its opportunity to define the law with regard to territorial waters, particularly in the matter of bays, but confined itself strictly to construing what was meant by the negotiators of the treaty of 1818 when they renounced for the United States the right to fish within three miles of coasts, bays, creeks, and harbors of His Britannic Majesty's dominions. Counsel for the United States, on the question of bays, argued that they were excluded, under this re-

nunciation, from territorial bays only. Great Britain contended that geographical bays were renounced, but sought to show that these geographical bays were also British territorial bays. This issue of territoriality was entirely circumvented by the court. They merely held that a bay, within the meaning of the treaty, was such a body of water as had the configuration of a bay—in other words, that a bay was a bay. They did advance the solution of the problem somewhat by recommending to the two nations the acceptance of certain lines as delimiting the jurisdictional bay from the open sea for fishing purposes.

It has been generally assumed that the width of the marginal strip is fixed in international law at three miles. This is so to a limited extent only. The municipal laws of various countries fix upon different widths, so that the three-mile limit of coastal waters is by no means universal. For example, Norway claims four miles, Spain six miles, and the United States have at various times and for various purposes claimed more extended limits. Moreover, it is recognized generally that three miles is not sufficient for many of the purposes of modern industrial life and international relations. In the matter of bays, there is also a wide diversity of opinion as to the limit of territoriality, although treaties within the last seventy years have usually fixed on a ten-mile width as the limit. Exceptions are recognized, due to peculiar geographical configuration and other reasons.

The theory of the territorial strip of coastal waters was first advanced by Grotius, to the effect that the width of the territorial sea depends upon its defensibility by the littoral state. This theory of defensibility was formulated by Bynkershoek, who stated that the territory of a state ended at the outermost limit of the force of arms—in other words, the range of cannon shot, fired from the shore, determines the limit of the territorial strip. In the early part of the nineteenth century this range was three miles, and in this way the three-mile limit found its way into international law and is confirmed by many treaties. The great increase in the range of cannon, however, has made it clear that defensibility is no longer the sole test of territoriality, but, on the contrary, that a much smaller margin than the limit of cannon range must be recognized as territorial water. The court in the Fisheries Arbitration did suggest certain criteria for determining the territorial character of a bay which, though only *dicta*, will probably find their way into international law as tests in determining the territoriality

of bays. These criteria are the relation between the width of the bay and its penetration inland; its adaptation to the industrial needs of the inhabitants of the adjacent shores; its remoteness from the general course of navigation. Thus the bay may be wider than ten miles at the mouth and yet be a territorial bay by the application of these criteria. Defensibility therefore, as a test, now occupies only a subordinate position.

These questions constituted the principal topics for discussion at the 1894 session of the Institute of International Law. Recognizing the insufficiency of the three-mile limit, they recommended the extension of the width of territorial waters to six miles, and in case of war to twelve miles.

This brings me to the suggestion which is my excuse for speaking at all tonight, that is, that it is impossible to lay down one universal width for all purposes. The unwillingness to recognize this fact has led to many of the difficulties which have arisen between nations in the matter of territorial waters. While for exclusive fishing rights of nationals we may be satisfied with a reservation of three miles, it has been conceded that for customs purposes a larger jurisdictional width is necessary. In the matter of neutrality certainly three miles is not sufficient. No neutral nation would feel secure in permitting belligerents to exercise their hostile operations in these days of long range cannon at a distance of five or even ten miles from its shores. Even for the one purpose of fishing it is recognized that regulations to preserve the industry from depredation must extend beyond three miles. Covetous foreign fishing vessels by the use of trawl-nets spread along the bottom may at a distance of five or even six miles kill off 90% of the young fish and soon exterminate a species. The necessity for regulation beyond three miles is, therefore, apparent. Thus in the three matters alone which I have brought up, fishing, customs and neutrality (and there are many others), different jurisdictional widths are necessary from the very nature of the case. They will, of course, impose corresponding obligations of police, etc. These matters having been dealt with by an organization such as the Institute of International Law, they will probably again come up for determination and definite interpretation before one of the coming Hague conferences. The point I have made was brought to my mind by a great deal of reading on this subject matter. I thank you.

The CHAIRMAN. As it is quite late. if there is no objection, the meeting will adjourn.

[At 10.50 p. m. the Society adjourned until Saturday, April 27, 1912. at 10 o'clock a m.]

FOURTH SESSION.

SATURDAY, APRIL 27, 1912, 10 O'CLOCK, A. M.

The Society met pursuant to adjournment.

In the absence of the President and Vice-Presidents, Mr. James Brown Scott, a member of the Executive Council, in the chair.

The CHAIRMAN. The meeting will come to order.

Before we start this morning, I would like to say that we are looking forward to a most enjoyable and exceptional banquet tonight.

The speakers at the banquet are to be the Honorable Henry Cabot Lodge, Judge George Gray, the Honorable William Sulzer, Chairman of the Foreign Affairs Committee of the House of Representatives; the Right Hon. Robert L. Borden, Prime Minister of Canada; Mr. Christian L. Lange, delegate of Norway to the Second Peace Conference and Secretary-General of the Interparliamentary Union.

We therefore look forward to a most enjoyable and most enlightening evening, and we would ask you, in view of the difficulty of completing arrangements and of satisfying the susceptibilities of those who like appropriate places, to register and to secure your seats at the banquet before adjournment this morning.

It has seemed best to vary the order somewhat and to postpone the business meeting until a later period during the morning session, and to begin the discussion this morning by the consideration of a "Permanent Court of International Justice."

I am very happy to inform you that Mr. Everett P. Wheeler, one of our most distinguished members and who has constantly honored us with his presence, will preside this morning, and it is my very great pleasure to introduce him to you as the presiding officer.

[Thereupon Mr. Wheeler, another member of the Executive Council, took the chair.]

The CHAIRMAN. Mr. James L. Tryon, Secretary of the Massachusetts Peace Society, is to read a paper on "A Permanent Court of International Justice."

Address of Mr. James L. Tryon, Secretary of the Massachusetts Peace Society,

on

A Permanent Court of International Justice.

A Permanent Court of International Justice—what does that mean? Not the creation of a new international court. We have one such court already and two more courts proposed. The first of these, called the Permanent Court of Arbitration, established at The Hague in 1899, has nine decisions to its credit. The second, the Court of Arbitral Justice, the draft for which was accepted by the nations at The Hague in 1907, would be in service today, as an alternative to the first, if an agreement could have been reached as to a method of appointing its judges. The third, the International Court of Prize, also a measure of 1907, will be utilized when its judges are appointed, and when a naval war makes its services necessary. The projects of all three courts are monuments to a century of the steady progress of the nations in substituting law for war in the settlement of their disputes. These courts should remain substantially as they are, but should be properly related to one another in their respective jurisdictions, each being so organized as best to serve the purpose for which it is intended. The Permanent Court of Arbitration should be for the voluntary settlement of semi-political disputes, or for any controversies that nations are unwilling to submit to the Court of Arbitral Justice. The Court of Arbitral Justice, better say the Court of International Justice, like the International Prize Court, should have an obligatory jurisdiction and be strictly judicial in its procedure; but, for the sake of prompt and economical administration, both courts should be combined in one institution with two functions.

Some changes should be made in the procedure of the Permanent Court of Arbitration. A system of orderly pleading is recommended by Mr. Dennis, the agent of the United States in the Orinoco Steamship Company case, and would seem to be needed. Case and counter case should be separated from argument. There should be a fixed order of arguments; evidence, instead of being introduced into them for the first time, should be included in the case and counter case, or otherwise formally presented to both sides. It is suggested that provision should be made for interlocutory motions and for discovery.

Mr. Dennis also tells us that the arbitrators who are chosen to sit on a case should be required by the terms of submission to know the languages that are to be used in a trial. If a judge is ignorant of a language with which both he and his colleagues are expected to be familiar, he will be at a disadvantage, and, by causing extra translations to be made, will add to the work of agent and counsel, as well as to the expense of litigation. This suggestion would, therefore, seem proper for adoption.

The question has been raised whether nationals should ever again be allowed to sit on a tribunal of the Hague Court. Under the present rules, but one national is allowed to each litigant on a board of five judges, or on a board of three, which means considerable advance in the conception of the constitution of an international tribunal as compared with the past, when commissions were made up entirely of nationals, sometimes with one of them as umpire. But with notable exceptions, such as the Fisheries and Grisbadarna cases, nationals, when used on arbitral tribunals, have shown a tendency to oppose decisions injurious to their country's interest. It was so in the Alabama case, from the main decision of which Sir Alexander Cockburn dissented; in the Japanese House Tax case, from the decision of which the Japanese member expressed vigorous dissent, and in the North Sea inquiry, to the findings of which the Russian members took exceptions in some particulars. Mr. Ralston, who is positively opposed to the use of nationals as arbitrators and who instances cases in the past in which nationals misused their position, states that they showed bias in the cases tried by the Venezuelan Claims Commissions, and declares that the chief value of an arbitral tribunal in the development of law and justice is practically reduced to the views of its neutral members. Mr. Ralston also objects to the appointment of citizens of a subordinate state of a litigating nation, as they may favor the views of the statesmen at the head of their superior government, with whom they are likely to sympathize. It is also said that nationals when on a tribunal are apt to influence their neutral associates with whom they are in contact for the several days or weeks in which a case is being tried. They are inclined on the whole, to act as counsel rather than as judges, and thus to bring arbitration as a legal proceeding into discredit.

What shall we say to these familiar criticisms as to the use of nationals, not only in arbitral tribunals generally, but also on those of the Permanent Court of Arbitration at The Hague? Nations, as a

rule, have been unwilling to submit their disputes entirely to the judgment of neutrals. Neutrals are strangers, and are apt to be unacquainted with the laws of the litigating states. For example, questions came up in the Fisheries dispute in which knowledge of a system of law peculiar to the United States and Great Britain required the services of American and British judges. The matter of saving national pride may also to some extent enter into the problem of the constitution of a tribunal. Pride can perhaps better be saved by a national than by a foreigner. In a case like the Casablanca incident, nationals performed good service in composing a difference over which there was sensitive feeling. If the Permanent Court of Arbitration were to be the only court of nations, it might be advisable to propose that nationals be finally excluded from its tribunals and left to outside boards of arbitration by legislation of 1915; but, if there is to be a Court of Arbitral Justice also, there is still, in view of the Fisheries and the Casablanca cases, so successfully tried under the present arrangement, an argument for continuing nationals on the present court when, for special reasons, they are desired.

In order further to eliminate partiality from the decisions of a tribunal, it is also proposed that the method of choosing neutral judges be revised. Neutrals are accused of taking the legal attitude of the Power that appoints them and of having a sense of obligation to fulfill like the national himself when it comes to a matter of saving their patron's face. To remove this danger, it is suggested by Mr. Ralston that a litigant nation should have the right of challenging the appointees of its opponent without, however, being compelled to give reasons, as a disclosure of objections might lead to unpleasantness. Thus a litigating nation would have a right similar to that enjoyed by a jury lawyer when he challenges an incompetent, prejudiced or otherwise unacceptable juror. Again, to meet practically the same objection, it is proposed by Mr. McKenney that, where there is to be a tribunal of say five members, each side shall nominate a list of judges for it, then each side shall choose two from the others' list. It is argued that this method would prevent either party from gaining an influence over the appointees, who would thus be obligated to neither party, but rather would be the choice of both parties. And again to guard against undue influence, it is proposed that when the arbitrators are informed of their appointment they be first notified jointly by the litigating Powers, or by the Bureau at The Hague (as they are ex-

pected to be), and not by the litigating Powers separately, lest an attempt be made to gain favor by sending the appointees messages of thanks. These suggestions as to amendments in procedure would appear to tend to impartiality, and might well be recommended for consideration.

If, however, the procedure in the choice of arbitrators is amended, it will still be a roundabout and time consuming process, and the so-called Permanent Court of Arbitration will lack the convenience that could be secured by a really permanent court. It must always be remembered that the judges, instead of being ready to try a case, have to be summoned for it after it has come up, and must be brought together from far distant countries at great expense.

The expense of an arbitration, though it bears no comparison to a war, perhaps the very thing a litigation is designed to avoid, is almost a deterrent. The cost of organizing and maintaining the court, according to the present plan, is borne by the litigating nations. Each party not only chooses, but pays its own judges. It is said, however, that a good percentage of the expense of the court is sometimes deducted from the award of an individual claimant for whom the litigating state intervenes; but it is proposed that hereafter such deduction should not be made, as it is a hardship upon the individual. A court that is supported from a common international fund, just as municipal courts are supported by the funds of a state, and not by the parties at issue, is greatly to be desired.

Besides these considerations with regard to details in the administration of the court, there is the fundamental objection that courts of arbitration are unreliable because they follow the principles of diplomacy, instead of law in the settlement of international disputes. The judges, taking the place of negotiators and splitting the difference, render a compromise decision, instead of giving a judgment based upon facts and law, according to the record before them. The Hague Court itself, the most highly developed court of arbitration ever used, has been subjected to the same criticism. There are, however, publicists who, while admitting that arbitration has in the past utilized the methods of diplomacy, deny that the present court has resorted to them, and maintain that it is legal in its methods. By The Hague procedure, this court does not require professional judges, but simply men who are competent in international law, many of whom, when the full list of appointees is examined, are found to be states-

men and diplomatists rather than jurists. It must be answered that the Permanent Court of Arbitration, whatever the legal attainments of its judges, as a whole cannot be impeached in respect to the legality of the great majority of its decisions. The fact that the decisions of the present court have been legal, and have been pronounced by men who have been selected for their high juristic standing, is an argument that the world in its practical experience is ready for a step forward in the development of arbitration.[1]

But the best of arbitration tribunals, even those that sit at The Hague, are only temporary. They meet, and pass upon a case, each one in an isolated kind of way, and it is believed that they make less science of law than would be made by a really permanent tribunal constituted of the same jurists all the time, growing in experience, blending divergent legal systems into a harmonious whole, publishing opinions with which their later decisions should agree, or from which they should develop new principles, assisted by a recognized bar of learned counsellors, especially qualified to serve an international court. It is believed, that if a court of nations could be established like the Supreme Court of the United States, or like other national courts held in high respect among governments, more cases would be attracted to it; war would the sooner pass away, and the gigantic armaments which now tax the financial resources of the people would begin to disappear.

But that the world is ready for a new court is abundantly evident in the accepted plan of the Court of Arbitral Justice. That is a court

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[1]It is admitted that the Fisheries case was so strictly legal in its technicalities as to be beyond the comprehension of the ordinary layman, and to be without the possibilities of a sensation for the "yellow journalist" from the standpoint of either British or American national feeling. Reference to the argument of Mr. Root will show the legal nature of that great case. If the judgment had in it elements of compromise, these have been satisfactorily explained by a recent letter from Dr. Lammasch. He insists, with good reason, that in all three cases over which he has presided, the Muscat, the Orinoco Steamship, and the North Atlantic Fisheries cases, the decisions have been juridical. The trouble with the decision of the Venezuela Preferential Payment case, of which there was the most criticism, was that it was legal instead of ethical, as the distinguished counsel for the United States and Venezuela would have had it; but, although it favored the methods of war, in spirit, by recognizing blockade as a legal means of redress, it, in fact, prevented war, and, by following upon the Drago letter, helped to put controversies over the contractual debts on a peace basis for the future, for that case prepared the way for the Porter-Drago convention, which was adopted at The Hague in 1907.

The Casablanca case, though legal in respect to the points of international law involved in it, must be admitted to have been diplomatic in its final conclusions, which, however, saved the honor of both parties.

that is really permanent, that calls for judges by profession, that pays them out of a common fund, that has no place for diplomacy, that demands juridical decisions, that includes representation of the principal languages, and that recognizes all systems of procedure and law. However grateful we may be for the present court as a means of securing peace and justice, we ought today to reassert our faith in the court that has been proposed, and to insist that, as was intended, it shall be put into operation as an alternate court to the Court of Arbitration. We ought today to rejoice that our president, Mr. Root, with his deep insight into the needs of the nations, courageously outlined the new court, both in his epoch-making address before the New York National Peace Congress, and in his instructions to the American delegates to the Second Hague Conference. We ought to take pride in the fact that our secretary, Dr. Scott, with his profound learning in international law, elaborated the scheme of that court. We ought to be glad that our distinguished member, Mr. Choate, helped to win a practically unanimous vote by addressing the Hague Conference in favor of the proposition. I know of no chapter in the history of international arbitration that has brought more honor to the American bar than this effort to establish a real court of international justice. If adopted, it means a turning point in the history of the law of nations, such as came in the days of Grotius and men of his type. An international judiciary must always be the leading feature of the society of nations, now gradually federating into a World State, just as the Supreme Court of the United States is the central feature of the plan of the American union. The regulation of war, limitations on the laying of mines, the restriction upon captures of private property at sea, rules for the rights and duties of neutrals—these, important as they are to humanity and commerce, are but the statutes of the hour and will change or pass away. The court is a more lasting creation. It is a part of the constitution of the society of nations, the guardian of their organic life and safety. Whoever works for it works for one of the greatest glories of the world.

But we must not take this honor, or keep this vision entirely to ourselves. It has already, to a large degree, been realized by our friends of Latin-America, who are represented here today. Within two months from the time of the adjournment of the Second Hague Conference, which failed to put the Court of Arbitral Justice into operation owing to the impossibility of agreement upon the appointment of

judges, there was established the Central American Court of Justice which has already begun to pass upon cases to the great benefit of the Central American states. We recognize that, however our systems of private law may differ in the Americas, our conceptions of public law are fundamentally the same, just as our systems of republican government, with some variation in details, are fundamentally the same. With the Latin-American states we are building up, as with no other countries, not even the English-speaking countries, through the Pan-American Conference and the Pan-American Union, an international state. The questions about which we differed in 1907, with regard to the proposed Court of Arbitral Justice, were too difficult to be settled in the few weeks that were allowed for the Second Hague Conference, but since we all believe in the juridical equality of nations, we are glad of the opportunity that we have had for further discussion of this topic. It has enabled us to take a larger view than we have ever had of the whole problem of the composition of the court. The principle is now made clear that, in the choice of a tribunal for the nations, none of the states should have a right to claim upon it an individual judge; each member of it should represent all of the affiliated states and be chosen from them at large. This is the juridical as opposed to the arbitral principle, and underlies the selection of the judges of the Supreme Court of the United States.

Had the Supreme Court of the United States, as we believe the most successful federal court in history, been organized under a plan that gave to any of the United States a claim on it to a perpetual representative, or even a representative by rotation, that tribunal would have been, in principle, not a judicial but rather a legislative or a diplomatic court, a court of arbitration like that of the old Confederation, of which each litigant has a voice in the selection of his own judges, which is the very kind of institution upon which we, after the manner of our forefathers, wish to improve. When we choose the judges for the Court of Arbitral Justice, let there be, as there is under the Constitution of the United States, where the Senate is given the right of confirmation, a uniform principle of selection in which each state shall have an equal voice; but let the judges be chosen for their fitness, for their learning in the languages, for their familiarity with the various systems of law to be used, and for their competence as professional judges. Let them not be chosen because of their nationality, or on any principle that makes for inequality among the states. If,

however, there should seem to be a need of it, there might, as has been suggested, be a safeguarding provision that not more than one judge should be appointed from one nation at a time.

But how shall the tribunal be appointed? Nobody can yet suggest an acceptable plan, but it has been proposed, and it is submitted that there is merit in the proposal, that the judges be appointed by the President of the next Hague Conference with the approval of its members, or that they should be elected by the Secretaries of Foreign Affairs, with such ratification as may be required by the constitutions of the various nations.

This leads to the consideration of possible amendments to the proposed plan for the Court of Arbitral Justice. I hesitate to offer any. To do so may seem presumptuous, but I would venture to suggest that, if changes are to be considered, they be of a kind to make the court, if possible, even more distinctively than it is, a judicial court—a court of law and equity, instead of an advanced development of the institution for arbitration now in use.

First of all, it is submitted that the name "arbitral" might well be dropped from its title, as one that is better suited to the Permanent Court of Arbitration, and that the name "Court of International Justice" be put in its place, for it is justice, not arbitration, not compromise, that we want.

It is submitted that the number of judges be reduced. Fifteen judges, though only a fraction of the number allowed the present court, might prove unwieldy, as well as expensive. There is danger, too, that with so many judges, they might take sides for or against a decision, and not act with proper independence. Would not a tribunal of nine, the size of the United States Supreme Court, be more suitable? A tribunal of five, the number in the Geneva and the Fisheries cases, the normal number of an arbitral tribunal today, has proved acceptable for the most important litigations which the nations have ever had. This, with a chief justice in addition, is the number with which the Supreme Court of the United States began its great work.

It is objected that the delegation of three of the members of the Court of Arbitral Justice to take cases between annual sessions is likely, owing to the less expense involved in making use of it, instead of fifteen judges, to lead to its too frequent use; but if this danger be real, it is an argument for a smaller court as well as a court awaiting its case.

It is said regretfully that we are embarrassed by the requirement that the judges for the Court of Arbitral Justice should be, so far as possible, chosen from the list of men now serving on the Permanent Court of Arbitration; but, as several members of the Permanent Court of Arbitration have proved themselves to be acceptable international judges, and as the provision for giving preference is not absolute, it need not be removed.

It is pointed out with reason that the salaries to be allowed the judges of the Court of Arbitral Justice (about two thousand, four hundred dollars a year, as an honorarium, and forty dollars a day, when in session only, with an allowance for expenses) are too small to compensate highly skilled jurists. These men, in a position of such high responsibility, might be paid as much at least as are the judges of the Supreme Court of the United States, which is about twelve thousand dollars a year. The cost of the court would be but about $100,000, or one-tenth of the cost of the annual maintenance of a single battleship, which is estimated at a million dollars. The salaries of the judges ought to be paid regardless of sessions; for, when not holding court, they should give their whole time to gaining the vast legal knowledge which their duties will require. Besides, when judges accept service on the Court of Arbitral Justice, they are excluded from other government appointment, and for some of them this may mean a sacrifice.

The question arises with regard to the relation of this court to the International Prize Court, which is also a court of law and equity, but of a type that is even more advanced than is the Court of Arbitral Justice. Why could not both courts be combined in one? If we may refer again to the system in this country, our Supreme Court acts as a prize court, and why could not the Court of Arbitral Justice so act in special session? We can find in this country judges who are competent in matters of maritime and prize law, who are also familiar with other branches of jurisprudence, and, if we have the whole world to draw from, there should be no difficulty in securing competent men to fill the requirements of both courts. Article 16 of the draft for the Court of Arbitral Justice prepares the way for the union of these courts by saying: "The judges and deputy judges, members of the Judicial Arbitration Court, can also exercise the functions of judge and deputy judge in the International Prize Court." But, to remove doubts in the minds of other nations as to

the practicability of a single court with two functions, one of them of specialist character, naval officers might act as assessors, sitting with the court on prize cases, but without a vote, which is what they are expected to do according to the convention for the International Prize Court, or they might be called as expert witnesses. Secretary Knox, who has honored the peace cause not only in assisting President Taft in the negotiation of the recent arbitration treaties, but by his enterprising advocacy of the new court, has endeavored to bring about, by the enlargement of the jurisdiction of the Prize Court, a combination similar to that proposed, and it is significant that he reports favorable progress in his undertaking. Such a combination would seem to be not only feasible, but in the line of economy and prompt administration. If we can get along with one court, and have that court always ready for either kind of case, that arising in peace or that arising in war, as opposed to having two courts, one in actual operation and the other on paper, and having to be especially summoned from all over the world when needed, entailing an extra charge on the nations for salaries and travelling expenses, why not do so? May we not then suggest this as a topic of discussion to the Programme Committee, and call their attention to the practical efficiency of the Supreme Court of the United States as an institution having several sides, one of them for adjudicating cases of prize?

Shall the jurisdiction of the Court of Arbitral Justice be obligatory, or voluntary, or both, and specified or unspecified? It is submitted that it would be well to give this court an obligatory jurisdiction of such controversies of the nations as may be decided by the principles of justice and equity, provided there is no formulated code, definite rule of international law, or treaty to go by. It would then correspond to the jurisdiction provided for the Court of Prize. If any category of cases be specified, we might include cases relating to the interpretation of treaties, pecuniary claims, and contractual debts, such as were proposed in the universal treaty of arbitration in 1907, as provided for in the Porter-Drago convention. And besides cases of first instance, we might send to this court cases of appeal where there has been essential error or denial of justice in international cases tried by national courts, by mixed commissions, or by the Permanent Court of Arbitration. Already we have seen in the Orinoco Steamship case and in the Pious Fund case, both of which had been previously adjudicated by international commissions, that

the present Permanent Court of Arbitration may be successfully used as a court of appeal. It would be carrying the idea of appeal but a step further to make the Court of Arbitral Justice a court of last resort. But, quite apart from a jurisdiction granted to the court in the instrument that creates it, there might also be left to it the large facultative jurisdiction which it now has, so that, by special treaties, nations could refer to it any kind of judicial cases, according to their pleasure. We might then leave the Permanent Court of Arbitration substantially as it is, with its own large voluntary jurisdiction, in the hope that it might continue to prove useful to nations, who might take to it semi-political controversies, or cases like the Casablanca incident, which have a diplomatic character, or who might for any reason prefer it to the Court of Arbitral Justice.

It is desirable that the Court of Arbitral Justice should be adopted by all the nations of the world. In any event, however, provision should be made that, when a certain number of those who are ready for it express their willingness to adopt it, it shall go into operation, with the understanding that others may adhere to it later when they are prepared to abide by its provisions. It should not be possible for a few nations to obstruct a measure of so great importance to the world as a supreme international court of law and equity.

To some nations, judging by the recent action of the United States Senate in amending the arbitration treaties to protect the Monroe Doctrine and other political ideas, it may seem necessary to make reservations when joining the court, if it is given a specified and obligatory jurisdiction. If reservations are to be made, they might take the form of resolutions of interpretation or limitation, with the understanding that they must have the assent of all the other states that are parties to the court, or that such resolutions are notice of the political position of any given nation in regard to the scope and powers of the court.

Whether, at this time, there should be inserted in the scheme for the Court of Arbitral Justice a declaration of rights for the protection of individuals as well as of states is also a question that is worthy of consideration; for, in some way, these rights should be guaranteed. A legally limited judicial tribunal goes hand in hand with a conception of sovereignty resting with the people rather than in kings and parliaments, which is a European conception, the governments under the European system being themselves unlimited sources of power

and law. It is feared that without proper safeguards these systems might clash, to the detriment of American institutions and to the inalienable rights of men; or to the overthrow of the European systems of government. For this reason it has also been proposed that the whole theory of arbitration be left upon an advisory basis as being safest for this country, and most consistent with the institutions of other nations who could with propriety accept advisory, instead of compulsory decisions. This distinction raises a large question for serious study by students of the science of international government.

But what shall insure the success of an obligatory court if established? Shall we provide it with sanctions? There are those who believe that such a court can never be what it ought to be without the sanction of force, just as there are those who distrust international law itself because it is not imposed upon the nations by a superior power, and who, therefore, grudgingly recognize it as law at all, believing that law is only law when by physical force you can make people obey it. But neither the world as a whole, nor a judicial union of diverse nations, is ready for the authorized enforcement of the decrees of an international court by armies and navies, or even by an international police; for, though we might with great economy use an international police today in place of so many large and separate armies and navies of the nations, we are not yet ready for that idea.

But it will be answered that municipal law has behind it in theory the police, the sheriff, the national guard, the regular army, and we see from time to time that it is necessary to protect with the militia an accused criminal in a jail when threatened by a mob; we also see that sheriffs and marshals sometimes have to be employed to enforce a process. But more than one hundred years of experience with the Supreme Court of the United States teaches us that, although that tribunal has behind it in theory the military power of the national government, the court itself has no army at its own command and no civil police of any consequence, and that with one exception, the case of the *Sloop Active,* when a posse of two thousand men was organized to carry out an order of the court in the State of Pennsylvania, there has been no call whatever for it to have a large organized force at its command; nor is there ever likely to be. Recalcitrant States are a thing of the past. They or their citizens now pay over their money or otherwise accede to the decrees of the court without ever a thought of constraint by force.

But what has so successfully carried along the Supreme Court of the United States, an international court first for thirteen and now for forty-eight sovereign States? Public opinion. But what has just as peacefully supported international arbitration courts and commissions in the several hundred cases, some of them of great magnitude, that have been tried in the past hundred years? Public opinion. And the nations need nothing else to compel their obedience to an international court than public opinion. "The force of law," says Mr. Root, "is in the public opinion which prescribes it." There is also a very powerful sanction in the agreement that, under the present arrangement, any two nations may make to submit a case to arbitration. The very submission of a question to a tribunal means an intention to comply with the terms of the award to be rendered, provided, of course, that it is in accordance with the protocol, and is based upon recognized principles of law and equity properly applying to the case. It is implied in the Hague Convention for the Pacific Settlement of International Disputes, which is applicable also to the draft for the Court of Arbitral Justice, that the nations shall carry out the awards of arbitration in good faith. They are explicitly pledged to do so in the Convention relating to the International Prize Court. Of equally great influence as a sanction would be the contractual agreement to be entered into by the nations in finally adopting the new Court of International Justice. The agreement of the American States to accept the terms of union in the Constitution of the United States, and, therefore, the jurisdiction of the Supreme Court, has been one of the strongest sanctions in support of our court.

But the objection is frequently made that international law is not only without sanction of force, but that it is vague, and the desire is expressed that there should be a code of law as a necessary adjunct to the court. Indeed, a code first and a court afterward, as was shown to be necessary in the case of the International Prize Court. This desire has associated with it a long history in which we, of this country, have taken especial interest since the formation of the International Law Association forty years ago, and more particularly in one of the recent annual meetings of this Society. It is noteworthy that international law tends to become codified, as witness, not only the Declaration of Paris, the Declaration of London, the Hague Conventions, but the rules of various international unions and congresses, such as those that deal with weights and measures, submarine cables,

and the slave and liquor trade in Africa. It may seem wise for this society to recommend to the Committee on the Programme of the Third Hague Conference the appointment of a commission on the codification of the law of nations, or to advise that such commission be constituted as soon as possible, and set to work with a view of reporting to the Third Hague Conference a code for adoption; but, with or without a code, the proposed Court of International Justice should be instituted, and may act both safely and effectively, just as the highest national tribunals and the Hague tribunals have acted, administering international law as it is today, taking it from its many sources, formulated and unformulated, the statutory and the customary law of the society of nations, and declaring it in the confidence that if a decision is just it will meet with universal acceptance. In the words of our dauntless Secretary, Dr. Scott, "The current of history is with us. Although the stream may be stemmed for a time, obstruction must needs be futile."[2]

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[2]The idea of a court of nations goes back at least as far as Henry IV, Emeric Crucé, Grotius, and William Penn, but, as outlined by them and their successors, the early schemes for an international court provided for an assembly of ambassadors acting as judges rather than for a tribunal of jurists. William Ladd, in his *Congress of Nations*, made a definite departure from the suggestions of all these writers by separating the idea of a court from that of a congress. In his plan, the congress was to codify the law of nations, the court to apply it. In the nineteenth century arbitration made great progress apart from the peace propaganda, as it was tried by many of the governments, particularly the United States and Great Britain, for the pacific settlement of their disputes. This method of adjudicating international controversies, however, was open to the criticism that arbitral tribunals came to their decision by compromise, the judges taking the place of negotiators and settling the questions before them by diplomatic adjustment. This method of arriving at a decision led to the fear of partiality, and prevented the submission of international questions, which might otherwise have been adjudicated had there been an international court of jurists acting upon known principles of law, and deciding their cases according to the records before them. This was pointed out in a memorable address, entitled "The American Sentiment of Humanity," by Hon. Elihu Root, at the New York Peace Congress of 1907; see report p. 34. Mr. Root, who was then Secretary of State, embodied the leading thought of his address in his *Instructions to the American Delegates to the Second Hague Conference*, with the result that they proposed the Court of Arbitral Justice, a judicial court based upon Mr. Root's idea. This court, adopted in principle by the nations, marks a steady advance in the conception of an international court from a diplomatic to a judicial body, Mr. Root having eliminated from the prevailing conception the idea of compromise. It will be seen, upon examination of the plans both of Mr. Ladd and Mr. Root, that they were influenced by the success of the United States Supreme Court, which is purely judicial in its character.

Among American publicists, the most voluminous and suggestive writer on the Court of Arbitral Justice is Dr. James Brown Scott, who, as the Technical Delegate of the United States to the Second Hague Conference, elaborated and

The CHAIRMAN. This subject is now open for discussion by the members of the society.

Mr. LANSING. I have prepared a brief paper on the question of procedure before an international court, supplemental to this very interesting paper to which we have just listened. It is, of course, a very broad field, and my paper is but a series of suggestions.

PAPER OF MR. ROBERT LANSING, OF WATERTOWN, N. Y.,
on
THE NEED OF REVISION OF PROCEDURE BEFORE INTERNATIONAL COURTS OF ARBITRATION.

Twenty years ago an international arbitration was viewed generally as a mode of compromising differences rather than as a determination of rights in accordance with the principles of strict justice. It was in fact a continuation of negotiations through the aid of a third party and was based upon the idea of mutual concession, in which there was a process of "give and take," the neutral arbitrators adjusting what each party should receive and what it should surrender. However, in the case of monetary claims of a more or less private nature the arbitrators as a rule applied rigidly legal principles, although in some

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championed the scheme of the court. For his writings and addresses, see 2 *American Journal of International Law*, 772; the Reports of the Mohonk Arbitration Conferences since 1907; the Pennsylvania Peace Congress Report, 1908, p. 98; the Chicago Peace Congress Report, 1909, p. 234 (*Some Subjects Likely to be Discussed at the Third Hague Conference*); the New England Peace Congress Report, 1910, p. 83, "Oration on Elihu Burritt," and Dr. Scott's volume of *American Addresses at the Second Hague Conference*, published by Ginn & Company, 1910. See also his article on the International Court of Prize in 5 *American Journal of International Law*, 302, which is closely connected in organization and historical development with the Court of Arbitral Justice; and "The Evolution of a Permanent International Judiciary" in the April, 1912, number of the *American Journal of International Law*.

For the Hague conventions and other action relating to the three courts, already established or projected at The Hague, see 2 James Brown Scott's *The Hague Peace Conferences of 1899 and 1907*, and A. Pearce Higgins' *The Hague Peace Conferences*. Introductory and explanatory matter will be found in 1 Scott's *Hague Peace Conferences*, and in Higgins' invaluable work. See also William I. Hull, *The Two Hague Peace Conferences*, and Thomas J. Lawrence's *Principles of International Law*. Articles on these courts by the present writer are as follows: The Proposed High Court of Nations, *Yale Law Journal*, January, 1910; The International Prize Court and Code, *ibid*, June, 1911; and The Hague Peace System in Operation, *ibid*, November, 1911. The latter article takes up the cases decided by the Permanent Court of Arbitration. The

instances political considerations appear to have affected their awards. Furthermore, in cases involving national rather than private rights arbitration was seldom invoked until diplomacy had hopelessly failed and the controversy had reached a stage which threatened peaceful relations. In such circumstances international arbitration was not unnaturally considered by statesmen as a substitute for war rather than a normal process of peace, and so it was generally treated by publicists.

This idea no longer prevails. A new conception of the province and purpose of arbitration has arisen. It is looked upon today as a usual rather than an unusual means for the settlement of international differences, which do not readily yield to diplomacy. To act justly is the controlling maxim of the new internationalism, which has to such an extent supplanted the selfish nationalism so long the strongest political force in the world, and the inspiration to governments to seek their own advantage with ruthless disregard for the rights of others. To guide its actions by this maxim is the desire and endeavor of an enlightened state.

This changed idea of the motives, which should direct a government in its international relations—an idea, which may be said to be universal among civilized nations—is the new cornerstone of arbitration.

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student of the subject will profit by reading discussions of these courts in the Proceedings of the American Society of International Law for 1908 and 1909. He will also find related topics in the development of international justice, treated in the Procedings of 1910 and 1911; and the latter for a code of international law especially. Valuable and inspiring sources of information and suggestion will be found in the reports of the American Society for Judicial Settlement of International Disputes for 1910 and 1911, in which are papers on the problem of a Court of International Justice, with helpful analogies to the Supreme Court of the United States. See especially the articles or addresses in the report for 1910, by Hon. Elihu Root, Hon. Henry B. Brown, Frederic D. McKenney, Alpheus H. Snow, Professor Eugene Wambaugh, Hon. Jackson H. Ralston, Hon. Andrew J. Montague, Hon. Simeon E. Baldwin, President Charles W. Eliot, and Hon. William Dudley Foulke. Mr. Theodore Marburg wrote a valuable summary of the thought of that conference, which should be consulted in order to get a consensus of American opinion. The pamphlets by this society reproduce some of the addresses already referred to, but "An International Court of Justice the Next Step," by George Grafton Wilson, is newly printed. This is useful as marking the state of temporary thought on the subject.

Other articles referred to in the text are as follows: Compromise, the Great Defect of Arbitration, by Hon. William Cullen Dennis, 11 *Columbia Law Review*, p. 509 (Mr. Dennis thinks that, for the present, a code of procedure in international arbitration is an even more imperative need than a code of substantive law); William Cullen Dennis, 5 *American Journal of International Law*, pp. 59-63; Thomas Raeburn White, The Underlying Principles Which

It removes the proceedings from the sphere of political expediency with its compromises and concessions and places them upon a plane where abstract justice directs the deliberations and moulds the decisions of arbitrators. Naturally this change is, in practice, more or less incomplete. It is difficult for nations, as it is for individuals, to abandon ideas which have been long held and which have become crystallized into usage and custom. Usage and custom are the expressions of ideas, but they may live after the ideas have become obsolete. Yet a change of idea is not complete until its expression in society is abandoned. The surest way of preventing a reversion to an idea, which is discredited, is to cease to follow the usages and customs founded upon it.

It should be recognized that compromise and concession, the useful instruments in diplomatic negotiation, are hostile to the conception of the administration of justice, and that a procedure sufficient for an international compromise may be entirely inadequate for a strictly judicial decision. The definiteness of legal principles and the conclusiveness of evidence are not absolutely essential to an award based upon mutual concessions. The claims of the parties, rather than the rightfulness of such claims, furnish the grounds for an adjustment by compromise. Expediency is uppermost in the minds of compromisers.

Should Govern the Method of Appointing Judges of the International Court of Arbitral Justice, *Mohonk Arbitration Report*, 1911, p. 102; Alpheus Henry Snow, Legal Limitation of Arbitral Tribunals, 60 *University of Pennsylvania Law Review*, December, 1911. This article should be carefully compared with Mr. Snow's article on the Development of the American Doctrine of the Jurisdiction of Courts over States, 1 *Judicial Settlement of International Disputes*, 100.

For discussions of the problems of an international court of justice by delegates of the Hague Conferences, the best original sources are the proceedings which are in French. Brief résumés of these discussions in English will be found in 1 Scott's *Hague Peace Conferences*, Higgins' *Hague Peace Conferences*, and Frederick W. Holls' *The Peace Conference at The Hague*.

For an official discussion of the problem of the relation of the Court of Arbitral Justice to the International Prize Court, see identic circular note by Hon. Philander C. Knox, Secretary of State, in 4 *American Journal of International Law*, p. 102. The combination of these courts in one, which is suggested by the present writer, is also proposed by Secretary Knox, with this difference, however, that the foundation of the plan of the Secretary of State is the International Prize Court, as that institution is already in a more advanced state of acceptance than the Court of Arbitral Justice, while the present writer's scheme makes the Court of Arbitral Justice the foundation. The plans further differ in that the first utilizes the scheme of judges already accepted for cases of prize, which permits nations to have individual representatives on the tribunal, while the second proposes that the judiciary be chosen from the nations at large, none of them to have the right to claim representation by an individual judge.

Positive right is secondary. Thus, when the old idea of arbitration is followed, justice is never fully or completely done. But, when arbitrators attempt to administer justice inflexibly without seeking to confer a measure of satisfaction on the party which is legally in the wrong they require more than the mere claims of the parties to reach a decision. The positions of the parties must be definite and clear and the facts of a case must be established conclusively before the rules of international law can be justly applied.

The present method of procedure before international tribunals is a product of the old conception of the province of arbitration. It is in many ways not adapted to the new conception. One of its chief defects in this particular arises from the dual character which each party occupies. Whatever may be the actual fact, a government is considered to be both complainant and defendant, or neither, except in the case of a pecuniary claim when unavoidably the government demanding damages is compelled to assume the place of complainant. This duality and equality of the character of litigants is a fiction invented by statesmen and maintained by governments with jealous care. It has no foundation in reason or in fact. In an international controversy one government must always be in the attitude of demanding rights, of which it claims that it has been wrongfully deprived. Although unwilling to acknowledge the fact, such a government is necessarily the complainant. So, too, a government which seeks to preserve the *status quo* is a defendant. The one is attacking existing conditions; the other is defending them; their relations as litigants are obvious.

To illustrate the actuality of the relationship between the parties to an arbitration and the certainty with which such relationship can be determined the following examples will suffice.

In the North Atlantic Coast Fisheries case, arbitrated at The Hague in 1910, the dispute was as to the extent of rights secured to American fishermen by Article I of the treaty of 1818 between the United States and Great Britain. These rights were to be exercised in the territorial waters of the British colonies in North America. The British and Colonial Governments, acting upon their own interpretation of the treaty provisions, restricted Americans in the enjoyment of the rights to an extent that called forth protests from the United States. Nevertheless Great Britain and her colonies adhering to their interpretation continued to enforce their restrictive policy. From the

point of view of the United States the conditions resulting were wrong and it sought to change them through the agency of an arbitral award. Evidently the United States was the complainant and Great Britain was the defendant.

In the case of the Alaskan Boundary, decided by the London Tribunal in 1903, although it was not an arbitration in the true sense, there being no neutral arbitrators, the customary procedure was followed. The United States was in possession of certain territory in southeastern Alaska which it had held since its purchase from Russia in 1867. This territory Great Britain claimed was occupied illegally by the United States through an erroneous interpretation of a description of the boundary line between the Russian and British possessions defined by a treaty between the two Powers made in 1825. The existing situation was satisfactory to the United States, but Great Britain desired to change it, so the London tribunal was instituted to examine the evidence and decide whether the line should be changed. Clearly Great Britain in attacking the *status quo* was in the position of complainant.

The Fur Seal Arbitration of 1893 grew out of the seizure by the authorities of the United States of British sealing vessels beyond the usual limit of territorial waters on the assertion of a right of property in the herd of fur-seals frequenting the Pribilof Islands and also of a limited right of jurisdiction over Bering Sea. The British Government complained of the illegality of the seizures and denied the rights asserted by the United States. It is manifest that the United States did not wish to change the existing conditions, so that in the arbitral proceedings, which followed, it was the defendant, while Great Britain seeking to have the United States abandon the rights, which it was enforcing on the high seas, was the complainant.

Yet in none of the cases reviewed was the actual relationship of the parties admitted, nor in the conduct of the arbitrations, which resulted, was the real character of the parties recognized.

This long accepted fiction as to the character of a party to an arbitration is the foundation of the present mode of procedure, by which the parties simultaneously submit their respective cases as complainants and their counter-cases as defendants, producing thus a double set of pleadings and a double record of evidence. From the primary step of submission to the final argument this duality persists, at least theoretically.

Now the normal procedure, when the true relations of the parties are recognized, as they should be if the present conception of arbitration is to prevail, would be for the government which seeks to change existing conditions to submit a case, which the government defending would answer with a counter-case, to which the complainant might reply, and in certain cases the defendant might be entitled to file a supplemental counter-case. Each of these documents would of course be accompanied by the evidence relied upon to support the allegations made.

It is evident that this method of presentation would bring out clearly the points of agreement and points of difference between the parties. It would settle the issues. By doing so as to matters of fact and as to principles of law the labor of a tribunal would be greatly simplified in comparison with the present dual method with its duplication of evidence, its vagueness as to the real differences between the parties, and its waste of time and energy over unimportant questions due to the uncertainty resulting from the confusion of issues. Furthermore, this method of presentation would prevent a government from withholding from its case in chief evidence which should be submitted therewith, for the purpose of producing it in its counter-case at a time when it can not be met with contradictory evidence, a temptation to which all governments are exposed by the present method of submission.

Another consequence of the method now employed would be avoided by the adoption of the procedure suggested. When the testimony of individuals is presented in support of an allegation, there should be opportunity to question the credibility of such witnesses. But with such opportunity there should always be furnished an opportunity to rebut the impeachment. Under the existing practice the impeachment of a witness is unjustifiable, and for the following reason: there are provided for each party two submissions of evidence, one with its case, the other with its counter-case; an attack on the veracity of a witness can only occur in the counter-case, and there is no opportunity after that to meet impeaching evidence with evidence in rebuttal. If the truth of a witness' sworn statements could be questioned by proofs that his reputation for veracity was bad, an entire case might be discredited, if the testimony was vital to it, and the party submitting the statements and relying upon their correctness would be helpless to prevent it. Manifestly this would be unfair and subversive of justice. On the other hand, perjury should not go unchallenged or the testimony of a disreputable person accepted without question.

Impeachment is a legitimate proceeding, from which a party should not in justice be debarred, as it now is because of the absence of opportunity to disprove the impeachment. The consequence is that a premium is put upon falsehood which is necessarily given a value equal to truth. Furthermore, it places upon a party presenting the deposition of a witness, a burden of responsibility for the veracious character of the witness, which ought not to be imposed.

While the new conception of the province of arbitration has received the sanction of the nations of the world and there is a general recognition that changes must necessarily result from its acceptance, one cannot close his eyes to the difficulties which stand in the way of revising the procedure of arbitral proceedings.

The first and probably the greatest of these difficulties is the strong prejudice prevailing among governments against varying a practice which has been confirmed by long established usage. Governments have found it easier in the course of negotiations to adopt language and follow forms, which have been previously used. Diplomacy, like one of the forces of nature, chooses as far as possible the line of least resistance; novelty is viewed with distrust; to travel in the old rut seems preferable to opening a new road; it is much easier to point out that an old way was found satisfactory than it is to convince by argument that a new way is better. This persistency of antiquated methods in the field of international intercourse will have to be overcome before any radical revision can be made in the present method of procedure. To attempt it when two governments are seeking to reach an agreement to arbitrate a particular case would seem to be futile. The subject of procedure must be considered in the abstract, when no controversy is under consideration to bias the judgment of the parties.

Another obstacle to a revision of procedure is the fear, which a government is likely to have, that, if it should become the complainant in an arbitration, it would lose certain advantages by being compelled to submit its case before the other party is called upon to do so. There seem to be two grounds for this fear. First, it is assumed, and with a show of reason, that a party which becomes the complainant by seeking to change existing conditions, would be charged with the burden of making out a *prima facie* case in favor of such change. Second, it is supposed that the defendant government would occupy a better position by being fully apprised of the complainant's claims before disclosing its own.

Whatever may be implied by the simultaneous delivery of two cases, the fact remains that one party is seeking to change the *status quo,* and, though the parties are technically and theoretically on the same footing as to the burden of proof and argument, a tribunal, acting with judicial intent, will certainly not decree a change unless the preponderance of evidence and the stronger legal position favors it. Facts and law being equal, if such a thing were possible, the decision would not change conditions. Thus the burden falls upon the *de facto* complainant under the present procedure as surely as it would in case of revision.

As to the second objection, it may be said that an international controversy involving national interests is, with hardly an exception, the subject of a long diplomatic correspondence before it is submitted to arbitration. Substantially every pertinent fact and every legal rule applicable to it have been advanced and discussed. A party would, therefore, suffer no injury by taking the initiative and presenting its case, nor would the other party derive any special benefit from such a course.

It is of course possible that there might arise a dispute as to which party was the complainant and which the defendant. In the majority of cases the character of the litigants would be so obvious that it would not be the subject of controversy, but in some cases a not unreasonable difference might arise on this subject. A method to settle such a question would have to be devised and enter into the revised method of procedure. Doubtless a commission empowered to review brief statements of the case by the respective parties would remove the difficulty. However, a review of former arbitrations will show how remote would seem to be the need of such a course.

The two principal obstacles to a revised method of procedure, namely, the tenacious adherence to old forms and usages, and the unwillingness of a party to begin the proceedings, having been removed, there ought to be little difficulty in securing a procedure similar to that used in national courts, which experience has proven to be efficient for the ends of justice.

The oral arguments would naturally follow the general plan of the procedure as to pleadings, while the printed arguments would become, as they doubtless should be now, briefs supplementary to the oral arguments rather than the arguments in chief, a practice materially detracting from the value of the oral presentation.

A revision of arbitral procedure as radical as that discussed would also affect the form of submission of a controversy to a tribunal of arbitration, and doubtless require a change in the present method. The customary way in treaties and special agreements making such submission has been to present the dispute in a series of questions, which the tribunal is called upon to answer categorically. While the normal way under the revised procedure would be to embody the claims of the respective parties in the demands for relief contained in the pleadings, such a course would give either party the power to require a judicial decision upon any question which it might see fit to raise, and would necessarily confer upon an international tribunal a general and almost unlimited jurisdiction. Governments are not yet prepared to clothe arbitral courts with so extensive powers. It is, therefore, necessary to restrict their jurisdictions by exact specifications of the points, which they are to consider and decide. To bring such limited submission into harmony with the idea of a complainant and defendant, it would be only necessary to have it consist of a set of declarations embodying the claims as to fact, law, and relief which the complaining government seeks to have judicially established, and, if the nature of the case requires it, there could be a set of counter-declarations on the part of the defending government. The declarations and counter-declarations forming a part of the treaty or special agreement would be the subject of negotiation and dependent upon agreement between the parties. This method of submission, though it is unusual, has been in exceptional cases adopted under the present arbitral procedure. While it preserves the relations of the parties as complainant and defendant, it would as effectively limit the jurisdiction of the arbitrators as is done by the common practice under the old method.

The propriety of urging a change in the procedure of international courts of arbitration so that it will eliminate the peculiarly objectionable features of the present method and give the proceedings a more judicial character, and the possibility of securing such a revision, are subjects which would seem to invite careful thought and consideration at the present time when another great Hague conference will so soon be called upon to re-examine the principle and practice of international arbitration. The questions are: Should a new mode of procedure be presented for the consideration of the world in conference assembled? And, if so, what should be that procedure?

It is my personal judgment, based upon more or less practical experience of the present method, that a revision on some such lines as those suggested would remove the chief objections of the procedure now followed, that it would stamp more deeply upon arbitration the character of a judicial proceeding, and that it would bring the practice before international courts into more complete harmony with the present conception of the scope and purpose of international arbitration.

The CHAIRMAN. Dr. Trueblood.

Dr. TRUEBLOOD. I should like to emphasize two or three things only which have been brought out or suggested in the interesting and comprehensive paper read by Dr. Tryon.

All the peacemakers of the world are agreed, I think, that a permanent international court of justice is one of the great ends to which all our efforts are tending, and for which we are all working. As long ago as 1840, or, in fact, some time in the thirties, the American Peace Society offered a prize of one thousand dollars for the best essay on a Congress and Court of Nations. That offer brought out the now famous essay of William Ladd, and, if I may quote the opinion of Dr. Scott, he said about all that is worth saying on the subject of an international court. That was sixty years ago.

The pacifists of this country and of all countries have always kept steadily in view that the aim of the peace movement—of course leaving out of view its final aim, the abolition of war and the establishment of permanent international peace—is to get a permanent international court of justice established. No one need waste time, therefore, in pleading for such a court any more. Not only all the pacifists, but also a good many people who are not professedly pacifists, are agreed as to that.

When it comes to the question of the time when we shall get this international court of justice and the methods by which it shall be established, there immediately appear differences of views, differences which are interesting, and which we ought all to consider, with due respect for each other.

I, for one, do not believe that we have yet got beyond the necessity of the present Permanent Court of Arbitration established at The Hague in 1899. There are several reasons why this court of arbitra-

tion is at the present time better adapted and more certain to secure proper adjustment of disputes among the nations than a permanent court of justice would be. The nations do not yet trust each other; there is not that sort of confidence which a court of justice would demand. The existence of the court would help to create this confidence, but you must have some of it before you get the court. If you had a court of justice set up today, it is more than likely that a great many of the controversies that arise among the nations would be referred to a tribunal chosen out of the present board of arbitrators established by the Hague Conferences of 1899 and 1907. It will be a good many years, probably, before we shall see the end of the need of the present arbitration court, in steering us through the suspicions and jealousies and hostilities coming to us from the past among the nations. So I hope our friends who are so deeply interested in the creation of an international court of justice, as I also am, will not say too much against the present Court of Arbitration.

You, of course, all know what was done at the Second Hague Conference. That has been brought out in the addresses which have been given. A convention to create a permanent court of justice among the nations, presented by the United States delegation, was approved without a dissenting vote among the delegations, and the only reason we have not that court is that the delegates could not agree upon the method of selecting the judges. Although five years have elapsed since this matter was unanimously approved in principle, there has been no progress toward the inauguration of the court.

What it seems to me all of us in the American Society of International Law and in all the peace societies ought at the present time to do is to turn our attention very largely and earnestly to the question of how we shall get this court into operation; how we shall get the judges chosen. That is the great question now before us. It is a greater question than that of procedure before the court. All these questions should be considered, but we ought to turn our attention largely to the methods of getting the court speedily into operation, as it will have to go through its infancy, and youth, and it will be a long time before it can supplant all the other institutions which are now used.

I quite agree with the sentiment expressed last year at the Mohonk Conference by a distinguished member of the Philadelphia bar, that the members of this court ought not to be appointed by the nations

represented at The Hague—there were forty-four nations—and that they ought not to represent the nations of the world as such at all. I am firmly convinced that that principle is sound, that in whatever way they may be appointed, they ought not to be chosen by the nations as such. Our United States Supreme Court judges are not appointed by the States, but by the President, the executive head of the nation. I do not think the supposed analogy between our Supreme Court and a court of international justice quite holds. Our States are all constituent parts of the Union. They are not independent and sovereign in the same sense that the nations that are represented at the Hague Conference are. Yet, as to the method of appointing the judges, I think we can safely follow the lesson of our own Supreme Court. Two or three methods have been suggested. I have not lost the hope that a member of the court for each of the nations may be appointed, and that a method may be found of using so large a court successfully. If I remember rightly, the Supreme Court of the State of New York has some seventy-five or seventy-six judges. If you should select a representative from each of the nations for the international court, might not the court be divided into sections—say, five or six—and each of these sections given jurisdiction in certain classes of cases, one to have charge of all commercial cases; another to have charge of the rights of citizens of countries residing in other countries, and so on? It would be easy to divide up a court of forty-five or forty-six members in this way. I do not think the matter of expense would occasion any difficulty. The State of New York does not complain of keeping in constant employment seventy-five or seventy-six judges. I suggest this for careful consideration by those who are working out the plan by which such a court may be established in the near future.

Then, as to the appointing of the judges, whether there be forty-five or fifteen or seven or nine, as suggested this morning, in some form, if not directly, all of the nations ought to have a part in the selection. The President of the Hague Conference acting in his representative capacity, might be asked to name the judges. I doubt if that would be satisfactory, however, at the present time. A committee of seven, nine or fifteen might be created at the next Hague Conference, whose duty it should be to select the judges, and then present their names to the general conference for approval. It seems to me it is possible in some such way as this either to have a court of forty-five judges, divided into sections, each section to have charge of a

certain class of cases, and these judges to be selected by some representative commission of the Hague Conference, or to have a court of a smaller number of judges selected in the same way, thus avoiding national prejudices and national suspicion in the creation of the court at the very beginning.

One word more. I rejoiced as much as any one else in the creation of the Prize Court at the Second Hague Conference. It has carried the principle of judicial settlement into a very important field, but the more I think of it the more I doubt whether you will ever be able to create the international court of justice through the Prize Court. The Prize Court will have no existence, except in form, unless a war is on between two nations, and the number of times it will be called on to act perhaps will be very few. Many of us are hoping it will never be called on to act at all. Between the United States and Great Britain it is almost certain that it will never be called upon. In three years from now we shall be celebrating one hundred years of peace between Great Britain and the United States. In three years Norway and Sweden will be celebrating one hundred years of peace between those countries, and in 1915 it will also be a hundred years since Great Britain and France had a tilt at arms. As between Great Britain and Germany it has been longer than that since they were at war, and I think it will be longer than that, in spite of the present strain, before they will have another war. Many nations will never call the Prize Court into service at all.

When mention is made of a distinction between civilized and uncivilized nations, I have tried sometimes to draw the line and put the civilized nations on one side and the uncivilized on the other, but I have never succeeded in making any satisfactory division. Every state should be represented in the international court of justice. They are all, or nearly all, worthy to be classed as civilized states. On the whole, therefore, it is not well to push the matter of a permanent international court of justice through the Court of Prize. If the Prize Court, which was accepted at The Hague, is put into operation, it will probably deal with cases only between a few of the great nations—the nations which now go to war. It is not the uncivilized or the small nations which today go to war and are arming for it, but the so-called great civilized nations. If you were to make a regular international court of justice out of the Prize Court, then few nations would go into it. So I think that we peacemakers, international lawyers, and stu-

dents of these problems, ought to give our attention very seriously to the question of how to get the court of justice, approved in principle at the Second Hague Conference, into actual operation. It will take us some time to get it into operation, of course. In the eleven years since it was established the present court of arbitration has only had some nine cases before it, and I doubt if in the next ten or twelve years it will have as many more. When your court of justice is created it will take a long time to get it thoroughly into operation. Let us therefore devote our energies to securing the appointment of the judges and getting the court started.

The CHAIRMAN. I take great pleasure in yielding the chair to one of our most distinguished vice-presidents, Judge George Gray, presiding judge of the United States Circuit Court of Appeals for the Third Circuit, and I do so all the more readily, if your honor will permit me to say a few words upon the pending paper.

[Judge Gray took the chair, and Mr. Wheeler was recognized.]

Mr. EVERETT P. WHEELER. My object in preparing some observations for presentation to this meeting is to point out how I think it might be easier to bring cases before the Hague Tribunal.

ADDRESS OF EVERETT P. WHEELER, OF NEW YORK,
ON
A PERMANENT COURT OF INTERNATIONAL JUSTICE.

In dealing with this subject, it is important to bear in mind that the mere enactment of any legal proposition, however wise, is of itself insufficient. As Professor Pound of Harvard has recently pointed out, one of the most important points in the study of the problem of jurisprudence is to consider "the means of making legal rules effective. This has been neglected almost entirely in the past. We have studied the making of law sedulously. It seems to have been assumed that when made, law will enforce itself."

When the first Hague convention was adopted, there were many diplomats who doubted and were of the opinion that it was no more than a pious wish which would never be made effective. We owe it to President Roosevelt that when the controversy arose between Mexico

and the United States with reference to the disposition of the so-called "Pious Fund," the controversy was referred to the Hague tribunal. Since that time the court has held numerous sessions and has disposed of some important controversies. But little attention has been paid to the important task of making the access to that tribunal more easy. The old diplomatic methods have largely been retained. These took no account of an international tribunal capable of deciding controversies between citizens of different countries. There is perhaps nothing more conservative than diplomacy.

I wish to speak today of that great body of controversies which consist of claims against a sovereign state by citizens of another sovereign state. The courts of England and America on the whole have been disposed to hold that such controversies can only be dealt with through diplomatic channels. Perhaps no case has gone so far as that of *The American Banana Co. v. The United Fruit Co.*, reported in 213 U. S., 347. This was an action brought by one citizen of the United States against another. It was alleged that this defendant, an American citizen, in violation of the Sherman Act and for the purpose of creating a monopoly of the trade in bananas between Costa Rica and the United States, had procured the Republic of Costa Rica to seize the plaintiff's plantation, to drive away the plaintiff's workmen, and to destroy the plantation itself. The Supreme Court of the United States held distinctly that this was not a justiciable controversy; that inasmuch as it was alleged that the defendant had obtained the aid of a sovereign state to commit the alleged torts, and they had in fact been committed by officials of that sovereign state, no court had the right to award damages for the injury that the plaintiff had sustained, and that its only redress was through diplomatic channels.

The British courts before this time had held that the validity of an act of state, as it was called, of a foreign government, could not be inquired into by a court of justice. To use the language of Lord Campbell in the *Duke of Brunswick's Case*, 2 House of Lords, 1, 27:

> The Lord Chancellor, I presume, would not grant an injunction against the French Republic marching an army across the Rhine or the Alps.

But no English decision, in my judgment, had gone quite so far as this American decision. Nevertheless, the last word from the Su-

preme Court certainly declares the law of the United States, and justly receives great consideration from the highest courts of other nations. We may therefore consider that for the future, unless legislation should provide a new remedy, controversies such as that which form the basis of this particular litigation will be presented through diplomatic channels.

It is, however, obvious that such controversies are, in their own nature, the subject of decision by an international tribunal. Whether the act of a sovereign state in evicting citizens of another state from property of which they were in the peaceable possession, and in destroying this property, is or is not lawful, is in its nature capable of decision by an impartial tribunal. Yet it is precisely such controversies that have frequently been made the occasion or pretext for war. The war now pending between Italy and Turkey was declared for the avowed purpose of redressing injuries of this character, which had been inflicted by the Turkish Government or its citizens upon Italian citizens who were lawfully in that part of the Turkish Empire known as Tripoli.

Inasmuch as the whole object of the movement for international arbitration is to prevent war, and since wars have been frequently occasioned by controversies of this sort, it would seem obvious that we should at least attempt to facilitate the adjudication of such controversies before the international tribunal at The Hague.

It is equally clear that the more we facilitate the reference of controversies to this tribunal, the more speedily shall we accomplish the object of a permanent court of international justice. The main reason—perhaps the only reason—for the character and composition of the present Hague tribunal is that very few controversies are referred to it; that a permanent court would not have business enough to occupy it, and that therefore it would be unwise to establish a permanent court.

And now leaving generalities, let us come down to particulars. The present method by which claims of the character mentioned are prosecuted is this: A petition is presented to the State Department, setting out the grievance alleged and asking the government to present the claim to some foreign Power. An appointment is made with the Secretary of State. Counsel for the claimant undertakes to present the claim. While he is in the midst of his statement, the telephone bell rings. It is perhaps the President who desires to confer with the Sec-

retary of State. Public business is, of course, more urgent than the private claim, and the counsel stops short in his argument and has it deferred to another day, while the Secretary attends to the more urgent business put before him by the Chief Executive. Or perhaps the Minister from Siam is announced. It would, of course, be highly discourteous for the Secretary of State to refuse to receive the minister of a foreign state. The hearing then is by this interrupted, and the counsel for the claimant is remitted to some other day. This day may well be remote. The Secretary of State of the United States is a very busy person, who has before him a thousand matters of great importance to the public welfare, and it is not possible that the representative of a private claimant should see him whenever, in the interest of his client, he might desire to be heard.

But let us suppose that the counsel has been heard by the Secretary. The next step in the proceeding is to refer the matter to the Solicitor for the State Department. The Secretary of State naturally desires a report from him. Accordingly the counsel attends before the Solicitor. It is true that in this counsel is not interrupted by a visit from any minister or ambassador, but the telephone bell is just as cogent and efficacious an interrupter as a visit from an ambassador. There are, of course, many matters of great importance concerning which the Secretary requires to confer with the Solicitor, and it is needless to say that the argument of counsel loses very much of its force in consequence. But let us suppose that the counsel has been heard before the Solicitor.

It may easily happen that the very next day some public exigency may arise which may require the Solicitor to defer the consideration of the plea to a more convenient season. It may be important that the Solicitor should attend at some diplomatic conference in Europe. He may be called upon to take part in presenting a case on behalf of the United States before this very Hague tribunal. So it may very well happen that the exigencies of public business prevent the Solicitor from passing upon the claim. He may be transferred to another post of duty, and the matter may thus have to be presented to a second—sometimes to a third—Solicitor. It is, alas, the fact that the salary of Solicitors of the State Department is not what it ought to be. It has frequently happened that a lawyer, most eminently qualified for that office, has been called away from it to some other more lucrative position, and there must be a successor who will take up the business of the Department *de novo*.

Again, let us assume that these various obstacles have been surmounted; that the second or the third Secretary of State to whom the matter has been presented, or the second or third Solicitor before whom argument has been had, is favorably inclined to the claim. It will naturally occur to you that he may feel that there are other parties in interest who should be heard before the claim is actually pressed by the Department. It may very well be that notice should be given to the adverse parties, and that they may have briefs to present and arguments to offer. Now, it is not the usage of diplomacy that in such case the counsel for the claimant should meet the counsel for the adverse party face to face. Each presents his own case the best he can, with very little or no information as to what has been said on the other side. No doubt the claimant's petition is on file. It may be a brief is also on file. But the opportunity which all lawyers consider so important in judicial proceedings, of meeting your adversary face to face and discussing the subject orally in the presence of the tribunal that is to pass upon it, is entirely denied. And thus it often happens that claims which are meritorious, and claims which are even finally allowed, descend from generation to generation. The case of the *Brig Armstrong* is, perhaps, the most notable, but there are many more. The counsel who has to present a claim before the State Department (and I do not say the difficulties there are more serious than they are in other Departments), is frequently reminded of the famous lines of Spenser:

> Full little knowest thou who hast not tried,
> What hell it is in suing long to bide;
> To lose good days that might be better spent,
> To pass long nights in pensive discontent,
> To speed today—to be put back tomorrow.

This description of the claimant in the court of Queen Elizabeth is a picture of what has occurred many times since in the chancellery of every government in the world. It perhaps was inevitable in the days when there was no international tribunal; when often armed intervention was asked in order to enforce a claim; and when the propriety of such intervention might well be disputed on grounds quite independent of the merits of the claim. In short, under the old system, expediency was inevitably the ground of decision, and not justice.

But now we have a court of justice. It ought not then to be very difficult to provide for the submission to that court of claims against one sovereign state made by the citizen of another. The means thereto which I would suggest are these: Let there be a Solicitor in the State Department whose exclusive business it shall be to deal with all claims presented to that Department by citizens of the United States against any foreign government. He should have an adequate salary. His duty should be to examine into these claims, not for the purpose of passing finally upon them, but sufficiently to determine whether they are presented in good faith; and whether they have any *prima facie* basis which would warrant their presentation to an international tribunal.

If they have, it should be his duty to communicate with the proper officer of the foreign state against whom the claim is made, and inform him of the claim and inquire whether or not the foreign government in question is disposed to make any offer in settlement of the claim, or whether it insists upon the claim being presented to the international court of arbitral justice. If a compromise should be proposed, it would be the duty of the Solicitor to submit this to the counsel for the claimant. If the Solicitor were clearly of the opinion that the offer should be accepted, it would be his duty to say so; otherwise the decision would rest with the claimant. If the claimant should refuse the proposed compromise, the next step would be the making up of a case and the presentation of it to the Hague tribunal in the manner pointed out by the Hague convention. Evidence would then be taken; that court would render its decision; and this decision would undoubtedly be respected and obeyed by all parties concerned. Here then, instead of delay, you have promptness; instead of confusion, you have order; instead of expediency, you have justice.

May we not hope that the present Administration, which has done so much to promote the cause of international peace, may at least recommend this proposed change of method and do what it can to secure for claimants an orderly and judicial determination upon the merits of their claims?

The CHAIRMAN. The paper is open to discussion.

Mr. LANGE. Mr. President, it may perhaps be considered a thankless, and, to a certain extent, a disgraceful act on my part to intro-

duce a jarring note, after the very remarkable paper which we have just heard from Mr. Tryon, which was born of such a noble enthusiasm.

However, I feel it my duty to put in a little word of excuse and defense on the part of those European states which dissented from the American proposal at the Second Hague Conference, of establishing a Court of Arbitral Justice. I shall be very brief and only say that it must not be taken as a sort of conservative spirit of skepticism in international matters that this dissension manifested itself. This opposition was born of very strong conviction. One of the most distinguished members of The Hague Conference, who was a member also of the first one, said, about the proposal of an international court of justice, "Well, that will be a fine kitchen in which to cook small steaks."

You have, at any rate, to reckon with that skepticism, and I confess myself, though being an enthusiastic internationalist and having no doubt as to the establishment in the ripening of time of an international court, that when I heard the proposal at the Second Hague Conference of a real permanent court, I thought the time was not ripe by far. I should like to suggest that the right procedure in this matter would not be to endeavor to create the necessity, but that the proper procedure would be to take tentative and slow steps. Mr. Tryon suggested and Dr. Trueblood followed him in saying that this court might serve for different purposes. Well, would it not be a much better thing to take a definite purpose and try to create for this definite purpose a regular permanent court, even if that court was not a universal court, and particularly not an obligatory court, which would be an impossibility, I think, to a great many states. Mr. Wheeler a moment ago spoke about the very frequent claims of private citizens against foreign states. I think it would be a most useful thing for international lawyers to try to create a special court for those claims, just as a special court has been created for prize cases. It has also been suggested that a court might be created for cases relating to the conflict of laws, and I think if the states which are opposed to the Hague convention on private international law could see their way to create a court for these cases, a most useful step would have been taken. I think it is to be considered as impracticable and as unwise to press for consideration by the Third Hague Conference the plan of a general court for all cases—a really universal court. I should

add that Dr. Trueblood was mistaken when he thought there was no dissent as to the adoption of this court. Not only did several states abstain from voting, but one state, Switzerland, took the very strong method of writing down its reserve, which is a very unusual procedure. You may say that at The Hague they adopted the International Prize Court; but you must remember as to that, that even if the International Prize Court might be considered from the standpoint of some states as not very satisfactory, it is much more satisfactory than the present state of affairs, when crises are submitted only to international prize courts. The universal court of justice did not represent much progress, from the standpoint of the smaller states, and it was feared that it might be a danger to their existence. I do not share that feeling, but I think it is due to the members of the Society to present this view, because it will be necessary for you to contend with practical conditions, and it will be necessary to reckon with the feelings of those with whom you have to work.

The CHAIRMAN. A paper will now be read by Mr. Henry White, formerly American Ambassador to France, on "The Organization and Procedure of the Third Hague Conference."

ADDRESS OF HONORABLE HENRY WHITE, FORMERLY AMERICAN AMBASSADOR TO FRANCE,

on

THE ORGANIZATION AND PROCEDURE OF THE THIRD HAGUE CONFERENCE.

I am afraid that the subject of this paper is not quite accurately described in the program. I was asked to give the American Society of International Law my "experience and views concerning the organization and procedure of conferences in general," whereas the program would imply the expression of an opinion as to the organization and procedure of the next peace conference at The Hague.

I feel that it would be rather presumptuous on the part of one who has not been a delegate at either of the two International Peace Conferences which have already taken place, to give advice as to the manner in which the third should be organized. If, however, a brief account of the methods adopted for the organization of those con-

ferences which I have attended can be of any service, as our friend Dr. James Brown Scott assures me it can be, to those having under consideration the best system of organization for the Third Peace Conference, I am happy to place my experiences and recollections at their disposal.

It has fallen to my lot to represent our government either alone, or with others—but in that case as head of the American delegation—at four international conferences, one at London in 1887-8; the next at Rome in 1905, the third at Algeciras in 1906, and the last at Buenos Aires—the fourth Pan American Conference—in 1910.

Each of these conferences differed from the other, both in respect to the number of countries represented, of delegates representing those countries, and also as to the international importance, from a political point of view, of the questions for the settlement of which they had assembled. They differed consequently also in regard to the methods of organization adopted, or which were indeed necessary. But there were certain features common to them all which render it possible for one who was present at each, to form a few conclusions as to what is to be commended or the reverse, in the organization of a great international conference.

The London Conference of 1887-8 assembled at the instance of the British Government with a view to regulating the unsettled condition of the sugar trade, if possible, by the abolition of bounties, which were then given by certain countries to their exporters, and as a result of which the latter were able to sell sugar at a lower rate on the London market than that at which it could be produced in Great Britain.

Twelve nations, all European save our own, representing all the beet-sugar and four-fifths of the cane sugar interests of the world, sent delegates to that conference, but the delegate of the United States was only authorized to attend "in a friendly way, to listen and report upon its conclusions without, however, committing the United States to participation in its deliberations or conclusions." He did not therefore take a very important part in its labors, beyond announcing that his government could not be a party to any agreement for the abolition of bounties, but the experience gained and the friends made there were of great use in the course of his subsequent diplomatic career. I was also immensely impressed with the far-reaching advantages of such conferences for bringing people of widely divergent views into touch, and often into accord, with each other, for enabling them to

appreciate the difficulties their respective governments have to contend with in arriving at any international agreement, and also in forming friendships which should prove useful in settling other international questions at future periods.

French was the language adopted and the minutes of the meetings appeared first in that language, being subsequently translated into English for the benefit of the British Parliament and public. Most of the delegates were permanent officials connected with the ministries of finance or the customs departments of their respective countries, but diplomatists were also attached to several of the delegations. The organization of the conference was practically in charge of the British Foreign Office. A member of Parliament, holding office in the Government as Parliamentary Secretary to the Board of Trade, was elected president at the first meeting at the suggestion of the British Secretary of State for Foreign Affairs, and the secretaries chosen were all English save one, a member of the French diplomatic service.

A program had been prepared and communicated by the British Government to the other Powers interested before the conference assembled, and this circumstance conduced very materially, as has also been the case at the other conferences which I have attended, towards the maintenance of discussions within certain channels. The program laid down four main points for discussion, but did not exclude any others "bearing on the sugar industry," which the delegates might wish to consider.

The questions dealt with were highly technical, and I remember being greatly struck by the knowledge possessed by the various delegates, most of them trained civil servants from early manhood, as to the intricacies pertaining to the manufacture of and the international trade in sugar.

It is difficult to remember accurately the details of a conference which took place twenty-five years ago, and upon the minutes of which I have not been able to lay my hands; but the impression left upon my mind is that of courteous but keen discussions on the part of an earnest and hard-working set of men, each of them anxious that the conference should arrive at an agreement, provided that end could be attained without placing his country at a disadvantage commercially with respect to any other.

Most of the discussions took place at the plenary sessions of the

conference, but one important committee was appointed for the purpose of examining and if possible bringing into harmony, as it did eventually, the projects for the abolition of bounties, some of which differed widely, presented in writing by the various delegations.

The International Agricultural Conference of 1905 at Rome was held, upon the invitation of the King of Italy, who had been inspired by the enthusiasm of our fellow-countryman, Mr. Lubin, of California, as to the advantages which might be derived by agriculturalists of every country from the creation of a central agricultural bureau or clearing house, whose duty it would be to collect, classify, publish and communicate to all parties interested, with the least possible delay, from one year's end to the other, all information obtainable concerning agriculture throughout the world.

This conference was in some respects the most remarkable that I have ever attended. It was also the largest, thirty-eight nations, of which fourteen were American, being represented by one hundred and ten delegates; some of them by one delegate, a number by three or four. Germany sent as many as nine, Italy twelve, France seven, and the delegations of all the Powers represented in Italy by ambassadors, our country being of the number, appointed them to be the chiefs of their respective delegations.

The extraordinary feature of that conference was that it assembled not only with a very vague idea as to what shape, if any, its labors would assume, but with a strong conviction on the part of a majority of the delegates that no result at all was likely to be attained, beyond perhaps a demonstration of good will to the Italian sovereign and nation. But, as a result of the tact and zeal of several of the very able men composing the Italian delegation, encouragement and interest took the place of scepticism and apathy. The result was that after sitting for ten days only the conference agreed upon a general act, which was signed by all the delegates for submission to their respective governments, creating the International Institute of Agriculture, which shortly afterwards came into existence and has been for some years established at Rome, our government being a member thereof, and contributing annually to its support. This result was the more remarkable, as there were only four plenary sessions of the conference, the first and second on the 29th and 30th of May and the third and fourth on the 6th and 7th of June, the whole of the time between the first and the two last meetings being occupied by sittings

of the committees, whereof there were three, and numerous sub-committees, in which all the serious work and discussions took place.

The committees were very large; the first being composed of sixty-two members, the second of fifty-two and the third of forty-three, many of the delegates being members of all three. Each of them appointed a number of sub-committees, in which the greater part of the work was done. Each country had only one vote in committee, as well as in the conference, and each committee was empowered to elect its own secretaries and chairman, the man chosen in each case for the latter post being one of the Italians previously referred to.

An immense amount of work in the way of discussion, and otherwise, was thus got through with, the agriculturalists from the different countries, many of whom had a good deal to say, not being at first, nor indeed for some time, at all disposed to fall in with each other's views.

Eventually however, they came together in the committees and I attribute that unexpected result very largely to the wisdom shown by the Italian Government in the selection of its delegates, and to the feeling which they succeeded in inspiring as to there being no desire on their part, or on the part of any group or clique, to hamper freedom of discussion by the other delegates.

The organization adopted was fully and even keenly discussed at the first and second plenary sessions. French was the official language adopted. The Italian Minister of Foreign Affairs was elected president of the conference, and proposed at the first plenary session a program which, after some modifications by the conference, was adopted. The committees were empowered to elect their own chairmen and secretaries, the chairman of each delegation being at liberty to recommend as many of its members for appointment to each committee as seemed to him advisable.

I may also add that a certain amount of kindly hospitality, which was exceedingly efficacious in greasing the wheels of the conference, as I have so often known it to be in the settlement of other diplomatic questions, was forthcoming on the part of the King of Italy, the municipality of Rome, and other public bodies, and nothing could have exceeded the atmosphere of general good feeling and of mutual appreciation of each other and of the work so unexpectedly accomplished, than that which pervaded the entire conference when it adjourned.

It would be difficult to imagine a more complete difference than that which existed between the conference last described and the conference which met at Algeciras in the south of Spain six months later, and which did not attract as much attention in this country as in Europe, where at that time there was great tension in the political atmosphere consequent upon the widely divergent views of France and Germany on the subject of Morocco.

Thirteen nations, all European save two, the United States and Morocco, were there represented. There were but twenty-five delegates in all, no government having sent more than two save that of Morocco, which was represented by four, France and England having each a single delegate.

The Spanish Minister of Foreign Affairs, who was also the senior Spanish delegate, was elected president of the conference at the first session. There were eighteen plenary sessions in all, the first being held on the 16th of January, and the eighteenth on the 7th day of April. There were no committees at this conference save the committee of the whole, of which there were twelve meetings. A small sub-committee not officially appointed and composed of the second delegates of certain countries met informally several times towards the end of the conference, with a view to bringing into harmony, in matters of detail, the views of France and Germany, which had by that time been well-nigh attained on questions of principle.

The feature of the Algeciras Conference, which was the most unlike that of any other which I have attended, was that all the delegates were lodged in the same hotel, the only good one of which the small town of Algeciras could boast, and they filled it almost entirely. Consequently, they had little society other than that of each other, and were constantly meeting, and discussing in twos and threes from morning till night in the hotel or its gardens, or during their walks or drives for sixteen weeks the questions at issue and the possible methods of settling them. The interest of two of the Powers represented—France and Germany—was more vital in respect to the outcome of the conference, than that of any of the others, whose chief concern was that it should not break up without reaching an agreement, as the latter alternative might not impossibly have resulted in war.

I felt at the time, and have felt ever since, that it was owing to the perpetual exchange of views which took place day after day be-

tween the delegates outside the conference, and consequently, informally, and to the agreeable and intimate personal relations which could hardly fail to be established between a number of men of the world meeting all day long for three months, that all friction at the formal sessions was avoided, in spite of an amount of tension in the atmosphere prevalent almost to the end, and very difficult to realize by anyone who was not present; a tension which was vigorously maintained by certain organs of the European press (there were over fifty newspaper correspondents all the time at Algeciras, but they were not admitted to the sessions of the conference), and which tension an injudicious word on the part of any delegate, or an unfortunate turn to any discussion in the conference, might have caused to burst into a flame, the consequences whereof would have been disastrous. From all of which it will be seen that there was comparatively little regular organization at the Algeciras Conference, owing partly to its exceptional nature, and partly to the fact that it was a small political conference.

It was practically under the control of the representatives of the great Powers who were all ambassadors or ministers of foreign affairs, past or present, and of which Powers I may say that the United States was the only one absolutely independent of and unaffiliated with any other. That is not a system, however, which I should commend for the organization of a great international conference; but the circumstances were exceptional at Algeciras, and the questions at issue of an exceedingly delicate nature.

I now come to the Pan-American Conference which was held at Buenos Aires during the months of July and August, 1910, and which is perhaps the best, as it is the most recent example of international conference organization which I have met with.

Twenty of the twenty-one American republics were represented there by fifty-seven delegates, of which the United States and the Argentine Republic sent eight each, Brazil six, Chile five and the other countries from four to one delegate.

The Chief Justice of the Argentine Republic, being also the senior Argentine delegate, was elected president at the opening session of the conference, the organization of which was in the hands of the government of that country, whose minister to the United States at that time was appointed secretary-general. Under his orders were the other secretaries, the interpreters, messengers and other employes

of the conference, the preparation of the minutes, of the order of the day for each session, and all the manifold details pertaining to the duties of the secretariat of a great international conference. There were fourteen plenary sessions of the conference, held for the most part to confirm the work performed by the committees which were constantly in session, and of which there were fourteen, whereof the membership varied from five to twenty, the latter representing one member from each delegation. Each of the committees elected its own chairman, the members of which were nominated by the president and voted upon by the conference. Several of the committees conferred that honor with unanimity upon the delegate of our country, but we had previously decided not to accept the chairmanship of any committee, and declined them all save in one instance, for which there were special reasons, as we thought it very desirable that the chairmanships of the committees should be in the hands of representatives of the other, and as far as possible, the smaller countries, in order to obviate any semblance of control of the conference on the part of the United States or of other important American Powers.

There were four official languages, those of the various American republics—English, Spanish, Portuguese and French. The minutes of the meetings of the conference and the other official documents connected therewith appeared in those four languages, it being the custom at Pan-American conferences for the language of his own country to be used by each delegate in speaking or in making communications in writing. Of course, all this required a great deal of organization, and while I would not go so far as to say that no improvements can be made at future Pan-American or other conferences upon the details of that organization, everything certainly worked harmoniously, as will be shown from the following quotation from the report of our delegation to the Secretary of State:

> There can be no doubt, moreover, that quite apart from the actual work accomplished, the constant intercourse and exchange of views in friendly conversation, during a period of nearly two months between representative men from all parts of America, in an atmosphere of harmony such as has been so marked a feature of this conference, cannot fail to react upon and to draw closer the relation between the countries represented.

A program had been prepared some time previous to the assembling of the conference by the Pan-American Union at Washing-

ton, and it would be difficult to exaggerate the importance and usefulness of such a program in checking tendencies to raise irrelevant issues, whereby the scope of the discussions might have been materially extended, and friction perhaps not altogether avoided.

All of the subjects upon the program were fully gone into and satisfactorily dealt with by the committees having them in charge, and the four conventions and twenty resolutions which were the outcome of the conference, were adopted practically as reported from the committees which framed them.

I may add that a great deal of that lavish hospitality which is never found wanting in any Latin-American country was forthcoming at Buenos Aires, and had its share in the successful issue of the conference.

From the brief description which I have endeavored to give to this Society of the manner in which four important international conferences were organized, it will be inferred that there are, according to my experience, two requisites of paramount importance for the successful working of such bodies.

The first is a program carefully thought out by the government summoning the conference and prepared after a confidential exchange of views relative thereto, through the usual diplomatic channels, with the other participating Powers. It is questionable whether the modification of that program by the conference should be possible, but if so, it should be only by a very large majority of the votes of the delegates. The program should lay down clearly the topics with which the conference is to deal, but it should not prescribe rules and regulations, unless in a very general way, for the organization, which had better be left to the delegates after the conference has assembled. Otherwise, the latter are not unlikely to modify rules prepared for them previously.

This was the case of Buenos Aires, where the conference, finding the arrangements provided by the Pan-American Union inconvenient in respect to committees, increased their number at its first plenary session from seven to fourteen, and also altered in several instances the number of members composing them.

On the other hand, the list of subjects to be dealt with as laid down in the program was rigidly adhered to, and it was found exceedingly useful on more than one occasion, as a bulwark against the introduction of contentions or irrelevant questions.

Next in importance to the program, I should say, is the provision for an ample number of committees which should not be too limited in their membership, as if too large, they can be divided into sub-committees. Their number, however, and that of their membership, as well as other matters of organization, should be left to the decision of the conference, and particularly should the election of their own chairmen and secretaries, be left to the committees. If the chairmen of the committees are appointed by the president of a conference, as has sometimes been the case, suspicion is likely to arise of a desire on his part to exercise a control over the committees, and through them over the conference. A committee of general welfare was found exceedingly useful at the Buenos Aires Conference and a committee of conciliation for harmonizing different projects presented is very desirable at any conference.

An indispensable element in the success of a conference is the harmonious pulling together of as many as possible of the delegates, and the prevalence of good will and friendship among them, whereby they will be led to foregather constantly, and to discuss with each other frankly and fully the questions before the conference, many of which are not unlikely to be practically settled in that way.

Long speeches and formal debates at plenary sessions are to be deprecated and such sessions should be confined as far as possible to the confirmation or rejection of work performed in the committees. For that reason, geniality of temperament, fondness for one's fellow creatures and a keen interest in human nature are, if I may venture to express an opinion on that point, more desirable characteristics than the gift of oratory, for delegates to a great international conference.

Mr. COLLIER. May I take just a moment, please?

The CHAIRMAN. Yes.

Mr. COLLIER. At the conclusion of the paper prepared by Mr. Straus, and read yesterday by Dr. Scott, Mr. Wheeler craved your indulgence to speak a few words with regard to the author of that paper, and now I would like to make just a few remarks with regard to the author of the paper just read, who is constructively absent.

As American Minister to Spain at that time, I know a good deal

about the conference at Algeciras, to which Ambassador White referred, and I am very happy to tell you that he was not the self-constituted but the naturally constituted mediator of that situation. and the influence of the American delegation at that time was very potent; and I do not have any hesitancy in saying that had it not been for his tactful work in smoothing away the difficulties, for his enthusiasm that broke the deadlock and made the difficult easy of accomplishment, and that which seemed impossible susceptible of realization. there might have been very serious international consequences; and it was Ambassador White's enthusiasm, tact and perseverance that kept them from going into a state of collapse, and enabled that conference to proceed to the realization of its hopes.

The CHAIRMAN. I am sure we all thank the former Minister to Spain for telling us what we all feel must have been the case, that Ambassador White's services were indeed valuable on that occasion.

Mr. ION. There is only one point in the paper of Ambassador White to which I would draw the attention of the Society. The United States made a departure in taking part in that conference, which I think was the first political conference in which this country participated which interested Europe. If the United States can take an interest in a conference as to Morocco, why not take part in a conference about Turkey or any other country in Europe? The United States had commercial interests in Morocco, but no political interests. It has even greater commercial interests in Turkey. Therefore, as a matter which should be considered for the future, may it not be queried whether it is in the interest of this country that it should take part in conferences which have an entirely political character?

Mr. MYERS. May I be permitted to interrupt the proceedings to reply to Prof. Ion.

The professor called attention to the fact that we took part in the Morocco Conference, and he seemed to think that that was a departure from previous policy. I have just been over the proceedings of the Morocco Conference, and I do not think it was a departure. It so happened that in 1880 there was signed at Madrid a convention, exclusively concerning commercial matters, which dealt with the ques-

tion of Morocco, and which was participated in by the diplomatic representatives accredited to Morocco, of which the United States was one. I believe we took part in that conference from a feeling of good will; and when the Algeciras Conference came on, our participation there was of no will of our own. It was simply through the historical circumstance that we had signed the 1880 convention, that we were among the signatories of the one in 1906. Our delegates not only signed it *ad referendum,* but with a very clear statement in the conference that we would not take any part in the administration of Morocco, and so far has that been true that when the question of the State Bank of Morocco came up, which was one of the subjects dealt with a few years later, I believe the United States, alone of all the signatories to the Algeciras Convention, refrained from taking any part, or rather, any stock in that bank. So our relations with Morocco remain entirely friendly, and our action in 1906 was rather from a spirit of good will in solving the Moroccan commercial problem than from any intention of entangling ourselves in European affairs.

BUSINESS OF THE SOCIETY.

Mr. SCOTT. Mr. Chairman I will ask you to pass to the reports of the gentlemen concerning the business of the Society.

The CHAIRMAN. The Chair then will call for the report of the Committee on Nominations.

Admiral STOCKTON. I have the honor to report the following nominations for officers of the American Society of International Law, for the coming year:

Honorary President,
Hon. William H. Taft.

President,
Hon. Elihu Root.

Vice-Presidents,

Chief Justice White,
Justice William R. Day,
Hon. P. C. Knox,
Mr. Andrew Carnegie,
Hon. Joseph H. Choate,
Hon. John W. Foster,
Hon. George Gray,
Hon. John W. Griggs,
Hon. William W. Morrow,
Hon. Richard Olney,
Hon. Horace Porter,
Hon. Oscar S. Straus,
Hon. Shelby M. Cullom,
Hon. Jacob M. Dickinson,
Hon. James B. Angell.

Members of the Executive Council to serve until 1915:

Chandler P. Anderson, Esq., District of Columbia.
Charles Henry Butler, Esq., District of Columbia.
Prof. George W. Kirchwey, New York.
Robert Lansing, Esq., New York.
Prof. John Bassett Moore, New York.
Jackson H. Ralston, Esq., District of Columbia.
James Brown Scott, Esq., District of Columbia.
Prof. George G. Wilson, Rhode Island.

The CHAIRMAN. The nominations are now before the Society. Are they seconded, or what action do you wish to take?

Mr. WHEELER. I move that the Secretary be instructed to cast one ballot for the nominations.

(The motion was thereupon duly seconded, put and unanimously carried.)

Mr. SCOTT. The Secretary reports that he has cast the ballot, with the result that the gentlemen mentioned have been elected to the respective offices.

The CHAIRMAN. The next is the report of the Committee for Selection of Honorary Members.

Mr. GEORGE G. WILSON. Mr. Chairman, at the meeting of the Executive Council yesterday it was suggested that the report which the Committee for Selection of Honorary Members made last year should be repeated, and therefore I read this portion of the committee's report of last year.

The committee, in the first place, considered questions of policy in connection with the nomination of an honorary member for this year, and possibly for succeeding years. A large number of nominations, which varied greatly in character, have come to the committee. The committee, after careful consideration, came to the conclusion that it would be advisable for a society of international law to confer this honor particularly upon persons who have been distinguished in the work of international law proper, that is, who have made contributions to the science or the history of international law, rather than to persons who have achieved, perhaps, diplomatic distinction. The reasoning by which the committee reached this conclusion was that those persons who in public life have achieved diplomatic distinction, get their reward in public service and public recognition, while persons who work and do most valuable service in the line of scientific work frequently receive little or no recognition, and if this Society could be distinctly a means of recognizing the contributions of such men as those, it is felt that the position of honorary membership would be greatly enhanced and the dignity of the Society would likewise be very greatly enhanced. Fortunately, we already have as our honorary members men of just that type—Asser, Holland, Lammasch and Renault—men who have made contributions to international law and, regardless of hire, have often done great public service.

Your committee proposes the name of John Westlake, K. C., LL. D., Edinburgh, D. C. L., Oxford, Whewell Professor of International Law, Cambridge University, 1888-1908, formerly member of the Permanent Court of Arbitration, author, adviser of the British Government, past president of the Institute of International Law, in his 84th year the dean of international lawyers.

I have the honor to make that nomination.

(The nomination was duly seconded, put, and the said nominee duly elected to honorary membership.)

Admiral STOCKTON. I have the following resolution to present to the Society:

Resolved, That in view of the great loss of lives, representing many nationalities, attending the sinking of the transatlantic steamer "Titanic," it is in the opinion of the American Society of International Law highly desirable that an international conference be convened for the formulating of such regulations as may diminish the likelihood of such disasters.

Resolved, further, That the President of this Society be and hereby is requested to take such action as he may deem proper to bring to the attention of the Government of the United States the opinion of this Society as to the great desirability of such an international conference and of the adoption by the United States of such rules as may be formed to increase the safety of travel

by sea and for the avoidance of the repetition of such tragedies as the one just happened.

(The resolution was unanimously adopted.)

Mr. SCOTT. On behalf of the Committee on Codification, I desire to report that, inasmuch as the entire meeting of the Society has been devoted to the Third Hague Conference, its program, the organization and procedure, the committee presents no report, but asks that it be continued, with leave to report at the next annual meeting of the Society.

The CHAIRMAN. The members of the Society have heard the motion of Mr. Scott, that the Committee on Codification be continued with leave to report at the next annual meeting of the Society.

Mr. HUNT. I beg to propose that Mr. Jerome Internoscia, of Montreal, be made a member of that committee, at least a consulting member.

Mr. SCOTT. Mr. Chairman, I move that the proposal of Mr. Hunt be referred to the President of the Society, who is ex-officio chairman of the Committee, for such action as the Committee may care to take, without any recommendation whatever from the members of the Society.

The CHAIRMAN. You have heard the suggestion by Mr. Hunt, and the motion by Mr. Scott that that suggestion be referred to the President of the Society, who is ex-officio a member of the Committee on Codification, with power in the Committee to take such action as shall to them seem expedient and proper.

A VOICE. The motion of Mr. Scott, as I understand it, is not yet before us to vote upon, that this committee be continued to report at the next annual meeting. I do not know whether Mr. Hunt's motion is an amendment to Mr. Scott's.

The CHAIRMAN. The chair acted upon the assumption that the motion of Mr. Scott was suspended while the suggestion of Mr. Hunt was being acted upon.

A VOICE. I second the motion made by Mr. Scott.

(The motion was thereupon put and unanimously carried.)

The CHAIRMAN. Now, we come to the consideration of the first motion of Mr. Scott that the Committee on Codification be continued with leave to report at the next annual meeting.

(The motion was thereupon duly seconded, put and unanimously carried.)

The CHAIRMAN. I am informed that a meeting of the Executive Council is called for two o'clock, at No. 2 Jackson Place. A motion to adjourn is now in order.

(Thereupon a motion to adjourn was duly made, seconded and carried.)

(Whereupon at 12:50 p. m., on the 27th day of April, 1912, the meeting adjourned.)

MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL.

SATURDAY, APRIL 27, 1912, AT 4:20 O'CLOCK P. M.

The Executive Council met in the Board Room of the Carnegie Endowment for International Peace, No. 2 Jackson Place, Washington, D. C., Saturday, April 27, 1912 at 4:20 o'clock p. m.

Present:

Mr. Charles Henry Butler,
Hon. John W. Foster,
Hon. George Gray,
Prof. Charles Noble Gregory,
Mr. Robert Lansing,
Mr. Jackson H. Ralston,
Mr. James Brown Scott,
Mr. Alpheus H. Snow,
Prof. George G. Wilson.

The Chairman, Hon. John W. Foster, was re-elected.

The election of the Recording Secretary, the Corresponding Secretary, the Treasurer, and the Assistant to the Secretaries and Treasurer was the next order of business, and the following gentlemen were re-elected:

Recording Secretary — James Brown Scott.
Corresponding Secretary — Charles Henry Butler.
Treasurer — Chandler P. Anderson.
Assistant to the Secretaries and the Treasurer — George A. Finch.

The following gentlemen were then re-elected to serve on the Executive Committee:

Hon. Elihu Root,
Hon. George Gray,
Prof. George W. Kirchwey,
Mr. Robert Lansing,
Prof. John Bassett Moore,
Prof. George G. Wilson,
Hon. Oscar S. Straus.

Upon motion, duly made and seconded, the following committees were re-elected:

Standing Committee for Selection of Honorary Members:

Prof. George G. Wilson, Chairman.

Jackson H. Ralston, Esq. Prof. Theodore S. Woolsey.

Standing Committee on Increase of Membership:

Mr. James Brown Scott, Chairman.

Mr. Charles Cheney Hyde, Prof. Jesse S. Reeves,
Prof. John H. Latané, Prof. Theodore S. Woolsey.

Committee on Publication of the Proceedings of the Sixth Annual Meeting:

Mr. George A. Finch, Mr. Otis T. Cartwright.

After discussion, and upon motion duly made and seconded, the Committee on the Seventh Annual Meeting was increased two over the previous committee, making the committee number seven, and the following gentlemen elected:

Mr. James Brown Scott, Chairman.

Mr. Clement L. Bouvé, Mr. Robert Lansing,
Prof. Charles Noble Gregory, Mr. Alpheus H. Snow,
Prof. Charles Cheney Hyde, Prof. George G. Wilson.

The Board of Editors of the American Journal of International Law was then re-elected as follows:

Mr. James Brown Scott, Editor-in-Chief.

Mr. Chandler P. Anderson, Prof. George W. Kirchwey,
Prof. Charles Noble Gregory, Mr. Robert Lansing,
Prof. Amos S. Hershey, Prof. John Bassett Moore,
Prof. Charles Cheney Hyde, Prof. George G. Wilson,
Prof. Theodore S. Woolsey.
Mr. George A. Finch, Business Manager.

General Foster, as Chairman of the Executive Committee, reported that that committee had, at a meeting held on April 6, 1912, authorized the issuance of a Spanish edition of the American Journal of International Law and the Annual Proceedings of the Society under an arrangement with the Carnegie Endowment for International Peace, and the Council, after full consideration and discussion of the project—

Resolved, That the action of the Executive Committee in arranging for the publication of a Spanish edition of the American Journal of International Law and the Annual Proceedings of the Society, be ratified.

It was the sense of the Council that an effort should be made to extend the circulation of the Spanish edition to Spain and the Philippine Islands.

Finally, the Council adopted the following resolution:

Resolved, That hereafter the standing committees be printed on the programs of the annual meetings.

Whereupon, the Council adjourned, having transacted all the business before it.

JAMES BROWN SCOTT,
Recording Secretary.

ANNUAL BANQUET.

NEW WILLARD HOTEL,

SATURDAY, APRIL 27, 1912, 7.30 O'CLOCK P. M.

FREDERIC R. COUDERT, Toastmaster. My friends of the Society of International Law, even on this joyous occasion I am sorry for you for several reasons; mainly because my friend, James Brown Scott, the modest and almost disembodied spirit who often presides over our destinies unknown to us, but for our good, has whispered to me in that diplomatic fashion which always characterizes him, that one of the speakers being late, he does not know what else to do but to have me go on a bit. He is very sorry. He wishes it were otherwise, but it is necessary to spar a little for time. (At this point the door opened and Senator Henry Cabot Lodge appeared.) I am glad, by looking at the door to see that the time will be short. I regret that my friend James Brown Scott, although a model of diplomacy, is sometimes guilty of impatience. Will you bring the Senator over to this table?

Gentlemen, I am sorry for you for another reason. Your honored president, Senator Root, your accustomed toastmaster, was not able to be with you tonight, and when I was asked to take his place, I immediately said no, because, with the modesty natural to a member of the New York Bar, I naturally felt that I could not fill his place. However, when pressure was brought to bear upon me, I looked at it from a different angle, and I made up my mind that after all the majority of us could not fill his place, and that it was always a good thing to be with the majority, however much you might prefer to be with the minority.

My friends, these annual reunions are occasions when in the daytime we treat of more or less frivolous and flippant matters; but in the evening we are accustomed really to look things in the face. Each man is supposed to get up on his feet and tell his real name; all those outward forms which mask real sentiment are cast aside, and we discuss those great bases of actual international law, those real institu-

tions which necessarily govern the destinies of nations, but which it is not usual to discuss in formal daylight session. Now we all know that the Hague tribunal, for instance, has a certain amount of value in propagating international law, in cementing the relations between nations. We talk of it solemnly and with bated breath at very great length. We feel that it is such a great institution that to treat of it briefly would savor of frivolity. But I wonder how many of us actually realize how far more important an institution in the development of international law is the banquet. I do not wholly share the view of the Scotchman who, when asked which of the incidents of social life he particularly enjoyed, said he would greatly enjoy the dinners if it were "nae for the conversation." So I feel about the banquet. If it were not for the speeches, it would probably be the greatest vehicle for international good-will and amity that the ingenuity of man has ever invented. Because, after all, if you want to propose a peace treaty, if you want to propose a tribunal at The Hague, you must do it in the evening, when men, in the Latin phrase, "have lived together." Conviviality means living together. So in the evening, when men know each other and express their real sentiments, then it is possible to initiate a movement of value. So that we are now performing the most important, the most difficult and the most delicate of acts. We are working that important and basic institution of international law, the international banquet.

My friends, we are, as the French say, *au complet*. All the speakers have arrived, and I do not find myself in the position in which I once was in my native town of Oyster Bay. It is a little village by the seaside which I have never before heard ridiculed, but which I have heard vituperated, if I may use the phrase, and perhaps not altogether because I come from there; but however that may be, on one occasion last fall, when there was a matter of merely local concern, for it only related to the State and not to the nation or the internation. I was asked to preside at a meeting at which our candidate for Congress, Mr. Littleton, was to speak. True to my habit I arrived punctually at 8 o'clock in the evening, and saw no one on the platform, and a large audience in waiting. I said to the local statesman in charge into whose hands such overwhelming matters were delegated, "Where is Mr. Littleton, the speaker of the evening?" "Why," he said, "he arrives on the train that reaches here at a quarter before ten o'clock." I said, "Why, man, it is only eight o'clock. What are we going to

do?" He said, "Why, aren't you going to speak?" Embarrassed as I was, I had the honor of the Bar and of the Society of International Law at stake, and I could not beat a hasty retreat. It was a bad night outside. It was raining hard, and I began. I made four or five excellent speeches, on all sides of all topics, and finally, at a quarter before ten, Mr. Littleton arrived to make the speech of the evening. Naturally, as I walked out, feeling rather self-complacent at the result, and cheerful that it was all over, seeking that solace of praise that we all like to have after the exertion of oratory, I said to the local statesman in charge, "Well, we have a very nice audience at Oyster Bay, very much interested in public affairs. Not a man left the hall." He said, "Yes, perfectly true. Oh, how it did rain outside."

Since then I have had a certain amount of embarrassment in filling in time.

The Senate of the United States is, I believe, a very useful institution. I say I believe it, because I do not know how far it is generally recognized.

Judge GRAY. They admit it.

The TOASTMASTER. Some of them admit it. However that may be, I believe it has certain important functions to perform under the Constitution, and I would not say on oath that it did not at times perform some of them. As to the quality of the performance, I am not a competent judge, for I am merely a member of the Bar, and not a member of the United States Senate, and of course that body could only be adequately judged by one of its own members. I take it that it is a great body of men from the standpoint of international law, that it fashions international law very largely, some might say, by negation. After all, action by negation may be in the end and in the long run valuable action. It may be a useful thing to put the brake upon our ardor. It may be a useful thing to prevent the United States from settling international difficulties through mere lawyers and having a resort to that more summary and expeditious method more consistent with brass buttons. As to that I can not say.

Then I know that the Senate has other very important functions. Its most important function, as I understand it, is to see that none of its constitutional power is delegated to anybody else; and when

the Supreme Court of the United States makes the precedent[1] that a body of non-senatorial experts may test the teas coming into the port, to see that they are of the proper quality, that this is not a delegation of the Senate's power under the Constitution, and that it is not necessary for the whole senatorial body at five o'clock assembled to test the various grades of tea, I then think it is quite possible that the brake ought to be put on, and that the Senate ought to be vigilant lest it go too far in the direction of the delegation of its power.

We are very fortunate in having here tonight as our first speaker one of our great thinkers and historians. I remember when I was quite a youth my father said to me, "If you want really to know anything about Washington, read Senator Lodge's life of him." I do not know how far I have profited by that advice, but I have tried to read everything that the Senator writes and says, and I manage to do it to some extent, although my time is limited.

It is a great pleasure for me, gentlemen, not to present, for that would be absurd, to this audience, but to announce that Senator Lodge is here present, and that for a few moments, by consent of the Honorable James Brown Scott, I yield him the floor.

Remarks of Senator Henry Cabot Lodge.

Senator Lodge. I am glad, Mr. Toastmaster, that you have softened your remarks concerning the Senate by very judicious remarks about an individual Senator, for which I am much indebted.

I was told by Mr. Scott, although you, Mr. Toastmaster, seem to have omitted to mention it, that I was to speak on arbitration, and I suppose Mr. Scott is the authority.

The Toastmaster. We all bow to him. He does not always confide in us.

Senator Lodge. At all events, that is the subject which has been most lately in the minds of the Senate so far as international affairs are concerned, and upon which it has been exercising those powers which some of our earlier statesmen were wise enough to confer upon the Senate, although it is sometimes forgotten that the Senate possesses them.

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[1] *Buttfield* v. *Stranahan*, 192 U. S., 470.

What I wished to say in regard to arbitration, and it shall be very brief, was born of the experience which we have been having with these last treaties. I have been very much struck, in the somewhat widespread public discussion caused by these treaties, at what seemed to me a lack of thorough understanding of the comparative values of different public acts and public policies for the promotion of peace. For example, to illustrate my meaning, take the treaty which has recently been made for the settlement of pecuniary claims with Great Britain. That is a most useful and excellent piece of work, involving great care and great patience and a good deal of toil, and it is in its degree advantageous to the cause of peace, because the settlement of any international differences, great or small, by means of arbitration, is an advancement of the cause of peace. But the settlement of pecuniary claims with Great Britain in that way is not such a substantive aid to the cause of peace—because it is not to be supposed in this age and generation that they would ever be settled in any other way—as, for example, was the settlement of the Newfoundland Fisheries question, which had been the subject of controversy from the time of the Treaty of Utrecht, some two centuries ago; nor was it as important as the settlement of the Alaskan boundary under President Roosevelt, for that was a question which contained the germs of serious conflict and a possible resort to war. Nor was it again as important to the cause of peace as the settlement of the Venezuelan question under President Cleveland, which removed a very dangerous question from the relations of two great nations. Therefore it is well, in considering what really makes for peace, to remember the comparative values of what is done by any single act or accomplished by any given treaty.

The first and most important element in the maintenance of the world's peace is the character of the men who are charged with the conduct of the public affairs of the various nations, the men in whose hands lie the issues of war or peace. That those men should be enlightened men, anxious to avoid war, strong in their policies and far-seeing in their outlook, is of the utmost consequence, and upon them, whoever they may be, in any country, rests in the last resort the peace of the world. Now to these men, charged with the conduct of national affairs, certain qualities are necessary for the maintenance and the advancement of peace, and I will try to state these attributes in their order.

First and most important toward the maintenance of peace between nations is it that the men charged with the conduct of national affairs should have the foresight to perceive when a danger is likely to come, should have the prescience of a serious difference, and should never permit it to arise, never allow it to be developed, should prevent if possible the creation of any situation which would breed differences. Let me illustrate what I mean by reference to a doctrine of the United States, not a doctrine of international law, but a great policy declared by the United States for its own safety and protection. I mean the Monroe Doctrine, which I regard as the bulwark of the peace and safety of the United States. I believe that policy has done more to keep us at peace with all the world, and to keep the world at peace with us, than any other policy that has ever been laid down. I have often heard it said that the American people do not understand the Monroe Doctrine. I think they understand it extremely well. They may not know the details of it, they may not ever have read the message in which it was enunciated. They may be unable to explain it, but they know, by a strong popular instinct, if in no other way, that the Monroe Doctrine means that in the American hemisphere no great military Power, whether occidental or oriental, shall ever be established. To the American statesmen charged with the conduct of our foreign affairs it is important that no question involving the Monroe Doctrine should ever arise. We do not want it ever to happen, if we can avoid it, that any situation should be created here from which it would be in the slightest degree difficult or embarrassing, not to say humiliating, for any friendly nation to withdraw. It is the foresight to be exercised in such cases as this—and there are many others arising among all nations—which will do most, in my judgment, to maintain the peace of the world.

The next thing which is important to the men charged with the conduct of foreign relations, if a difference actually arises, is to settle it if possible by diplomatic negotiations. If it cannot be settled in that way, then we must resort to arbitration, and every effort should be made to bring about arbitration for the settlement of all questions. This brings me to the point where Senate action begins and where those charged with the conduct of government require the assistance of the ratifying and confirming authorities. You, Mr. Toastmaster, have made in this connection some references to the Senate of the United States. Thinking that perhaps there might be some such

allusions made, I ventured to bring with me a brief list of what the action of the Senate has been upon this matter of arbitration, in order to define its position upon this great subject.

The first agreement for the settlement of an outstanding international difference by reference to an impartial tribunal was made in the Jay Treaty of 1794 with Great Britain, and the second in the Pinckney Treaty of 1795 with Spain, and both treaties were ratified by the Senate of the United States. Since that time we have made in all, with different countries, eighty-four treaties providing for the special or general arbitration of international differences. I have a list of them here, but I will not read it. The Senate has ratified eighty-three of these arbitration treaties, and rejected one, the treaty of arbitration with England, made by Mr. Olney in 1897. I think this indicates at least that the Senate has not been hostile to arbitration. The list includes, I ought to say, the ten treaties negotiated by Mr. Hay and submitted by President Roosevelt in December, 1904, which the Senate amended by putting the word "treaty" in the place of the word "agreement." Owing to this amendment the treaties were never submitted for final ratification to the countries with which they had been negotiated.

No doubt everyone here is familiar with the further fact, but I may as well recall it, that in 1890 the Senate passed the following resolution.

Resolved, by the Senate, the House of Representatives concurring, That the President be and he is hereby requested to invite, from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency, may be referred to arbitration and be peaceably adjusted by such means.

That policy was laid down by the Senate in 1890, and I think it is only fair to say that they have adhered to it ever since.

Now those eighty-three treaties of arbitration were all, in their varying degrees, substantive acts making for the peace of the world. They replaced, for the old time arbitrament of the sword, the arbitrament of a tribunal; and every treaty of arbitration which actually settles an outstanding difference is far more important than any treaty which merely promises to arbitrate questions in the future.

The treaty of arbitration, when the arbitration has been carried through and the case settled, is a real advance. I do not underrate the value of what are known as general arbitration treaties, which are promises to arbitrate questions in the future. But it is always dangerous to make promises to do something in the future as to an unknown question arising under unknown conditions which no man can foresee. A general treaty of arbitration is of value, because it promotes the habit among nations of looking to arbitration for the settlement of international differences; but that is the limit of its usefulness. The real service is in the arbitration itself, and the general promise contains perils which the actual treaty bringing the question to a tribunal does not contain, because the actual treaty of arbitration deals with a specific and known question. The issue is made up, the forms of the questions are agreed to. All is set forth in that treaty. You know exactly what you are doing. When you are considering a general treaty of arbitration, making promises as to the future, you do not know, and no man can tell what you are to deal with when the unknown questions arise. Therefore, all general arbitration treaties must be regarded with the utmost possible care. Nothing could be more unfortunate for the cause of peace and arbitration than to have a general arbitration treaty agreed to which, when the time came, either party to the treaty, no matter for what reason, should reject or decline to obey. We should under no circumstances put our names to any promise of arbitration in the future which we do not mean to carry out absolutely, in letter and in spirit. Neither the cause of peace nor any other great cause can be promoted except by a rigid adherence to the terms of the agreement made between the nations.

Now there are certain questions which in my judgment, and in the judgment of many people wiser than I, are not of such a nature that any nation could or would agree beforehand to arbitrate them if they were raised. Therefore such questions must be eliminated. There must be some room left the nations signing the treaty for discretion and discrimination. It is on that point, as to what questions shall be eliminated and what questions shall be included, that the difficulty about all general arbitration treaties has arisen.

That was the case with the ten treaties made by Mr. Hay, because it was believed that under the terms of those treaties the special arbitration agreements would not be submitted to the treaty-making

authority of the Constitution. In these later treaties which have been so recently under consideration there was one clause which I need not go into here, but which, it was thought, would involve the United States in a promise to arbitrate certain questions, if the high commission declared them to be arbitrable, which the nation would never consent to arbitrate if it was brought to the point. The mere fact that this view was widely held was enough, for there is no use in attempting to make nations arbitrate questions which they are unwilling to arbitrate. You can deal with such differences much better outside of a general promise. That most important treaty to which I referred, the one under which we settled the question of the Newfoundland fisheries, was not settled in accord with the general arbitration treaty now existing between this country and Great Britain. It could have been excluded under the terms of that treaty if they had been rigidly applied. It was settled by the statesmen of the two nations, because they believed the time had come to settle it, and that it could be settled, and it was settled, and the general promise of arbitration had nothing to do with it. I believe those great questions can always be settled in that way much better than by trying to force one party or the other under claim of a promise.

It is also to be remembered that these two treaties, with England and France, represented treaties with all other friendly nations in the same terms. As I said in the Senate, and I repeat it here, war between the United States on the one side and either Great Britain or France on the other is inconceivable; but there may be, with other nations, possible questions which could not be settled as we should settle similar questions with Great Britain or France, and that is another reason for care.

I am not going to enter into the constitutional question of the delegation of power, which is not to me the important question involved, but I wish to say this in closing, in regard to the Senate, which is under the Constitution charged with our foreign relations, because the States reserved to the body which represented the States a controlling share in the treaty-making power.

I desire to say this of the Senate, in justice to that body. People who imagine that the Senate or the House of Representatives are anxious to bring on war, or that they are looking at these questions with the view that there may be war, make a great mistake. The Senate and the House, under the Constitution, are invested with the

war power, and there is no body of American citizens who are so averse to the use of that power as the men who are charged with it. On them rests the terrible responsibility if war comes, and I can assure those who imagine perhaps that the Senate or the House is likely to do anything to promote war, that they are the very last men who would do anything in that direction. I am sure the Chairman of the Committee on Foreign Affairs of the House (Mr. Sulzer), who is sitting on my left, will agree with me in that proposition, that there is nobody more averse to doing anything that will bring on war between this nation and any other nation with whom we are at peace, than those in the House and Senate who are charged for the time being with the conduct of our foreign relations.

The TOASTMASTER. Gentlemen, if I should say, expressing the feelings of all, that we were edified and delighted with what the Senator has said to you, it would scarcely be complimentary to any of you, because if we were not edified and instructed, as well as delighted, we should certainly not belong to this organization. Therefore in saying that I am not paying you any particular tribute. Now if I did not mention the fact that the Senator was going to speak about arbitration, it was because I rather hoped he would not. That is to say, I wanted to hear him speak about anything or everything, because I have read his speeches for many years with such intense delight that it was a great pleasure to me to hear him in the flesh. But if I dreaded hearing him on arbitration, I will take you into my confidence and tell you why. It is not because I feared his arguments to be unanswerable, as some of them always are. I have heard arguments against the peace treaties before. I heard another kind of argument in New York at Carnegie Hall recently, and I must admit that, difficult as the Senator's arguments are to answer, those at Carnegie Hall were still more impossible. But that was not the reason of my preference for another subject. It was because I had the pleasure a few days ago, somewhat late I will admit, owing to my professional engagements, to read a very instructive and able speech delivered by the Honorable Senator on arbitration, in which he quoted a New York lawyer whom he called distinguished, and therefore I did not suppose it was at all personal until I came to read the quotation, and found that he had used the epithet "distinguished" in a Pickwickian sense. After citing this lawyer, he explained that this was an instance of

the carelessness with which subjects were treated, even by professional men who were supposed to have a rudimentary knowledge of history. The quotation that this unfortunate but nevertheless distinguished man had made was that "our relations with France had always been friendly." Possibly it was a bit of kindly sentimentality, prompted perhaps in part by the fact that among the audience were distinguished natives of that great land. Therefore the statement may have been in part tinctured with that gallant politeness which is not in any way incompatible with international law. After all the so-called distinguished speaker was not a trained historian, and it was unnecessary for him to ransack the archives of the State Department to find that in long-forgotten times there may have been little differences between those who ill represented the great, throbbing, sympathetic hearts of both these sympathetic peoples; the Senator's criticism seemed to me like saying of a couple who had lived together for perhaps half a century in what they had supposed to be peace and amity that after all in their early youth they occasionally got into little tiffs. However, I do not know that I ought to extenuate any further the sayings of the distinguished lawyer, because nobody will recognize him by the description that is found in the speech of the learned Senator.

The judiciary is still an institution of considerable importance, though, like the clavicle in the cat, it is rapidly tending to become rudimentary. However, at times it still may have a certain vigor, and therefore it is not yet wholly improper to ask the judiciary whether under any circumstances, at any time, it is proper that it should say anything for itself; so that when we have with us one of the most splendid exponents of the bench, it is fair that we should make him speak.

During the French Revolution some of those gentlemen who believed in short cut methods for attaining the ideal, thought that the bench and the bar might be dispensed with by the liberal use of the guillotine, and a very serious young member proposed that the bar and the bench be decapitated. More moderate, reactionary and conservative counsels prevailed, and it was decided that the bar should simply be disfranchised, put out of their functions, and relegated to the business of ordinary citizens. Consequently the usual legal controversies which dragged out in long litigations were relegated to settlement in the streets. However after a time, in some way or

other, by reason of some inherent curse in human nature, the bench and the bar both got back to work again, and were very vigorously doing business at the old shop, even under Napoleon.

Now, gentlemen, we have here, as I have intimated, a judge whose decisions may possibly at times have been "recalled" on consideration by the Supreme Court of the United States. I myself only know of one such instance, and on recalling it to my friend, the judge, he reminds me that in that particular instance there was a dissenter; and while he is not sure of the dissenter's name, he thinks that without an undue amount of ransacking his memory, it was Gray. And therefore I will call upon that honorable gentleman, whom we all know, and whom we all love, who has stood so splendidly by this institution in aiding it and enlightening it, that loved and most honored jurist, Judge Gray.

REMARKS OF HONORABLE GEORGE GRAY.

Judge GRAY. Mr. Toastmaster, I have sometimes thought that when a speaker was introduced by so laudatory a preface as has fallen from the lips of the brilliant gentleman who has just taken his seat, it may have been intended merely to discount any disappointment in the performance that was to follow.

I am here tonight because I have been interested from the beginning in this Society, and because I want to congratulate you gentlemen of the American Society of International Law upon the growing and widespread interest which is everywhere manifested in this country in your labors and in what you are doing here, and through the pages of the journal which, under the auspices of this Society, has come to its fifth year of existence, with increasing usefulness and instruction for all who are interested in the maintenance of legality in the relations between nations.

I do not know any instrument or factor in the promotion of the great cause of peace through arbitration, so influential and so potent as an international law society. If we are to have peace as the normal condition, or rather if we are to maintain peace as the normal condition among the civilized nations of the world, it must rest upon law; it must rest upon those principles which commend themselves to all intelligent men as the very foundation of justice, for justice and law are inseparable. It is in vain that we look for world-wide peace unless it can be established and maintained upon principles which

rest upon that international morality which has come to be called international law. Therefore I congratulate you gentlemen, my associate members in this Society, in the work that we are doing and in the work which we have undertaken, to diffuse among our fellow-countrymen a respect for those foundation principles which in all civilized countries must govern the relations of men with men and of nations with nations.

There is one thing that in the society of nations must not be forgotten, and that is that the society of nations is a democratic society in the best sense of that word. It rests upon the foundation upon which all true democracy rests, the equality of the members of the society. That basis of equality among nations, great or small, will keep alive in the breasts of all men who love peace, a principle upon which alone permanent peace, a permanent amity, can be maintained.

I have listened with great interest to what has been said by the distinguished Senator who has addressed you in regard to arbitration in general and to the arbitration treaties in particular which have recently occupied the attention of the Senate, and very justly occupied the attention of all the intelligent people of this country. I agree with a great deal that he has said. I agree that perhaps no more unwise course can be taken than a precipitate launching of this government into arbitration treaties that are not well considered or for which the time is not ripe; for we all must recognize that all the great forward steps in the progress of civilization and of humanity have come about after a series of preceding steps which were a preparation for the event that was to mark as an epoch the time in which they occurred. A certain fullness of time must come for all great advances of that kind, and I fully believe that no one can be mistaken in believing that that fullness of time has come in regard to arbitration treaties. We are not precipitate in imagining that we can provide by stipulation, by a national promise, that, what we have in the past merely dreamed of, may be crystallized not only into a hope but into a realization; when we say that controversies between this country and any other country in the civilized world should be settled by arbitration rather than by war. Of course the language of such treaties should and must be guarded. It will not do to say that we can promise that in the future we will settle all imaginable difficulties arising between this country and any other country in the civilized world by submitting them to arbitration. As the Senator has

said, there are questions which reserve themselves, which do not need to be reserved in diplomatic language or in the language of a treaty, things which separate themselves naturally from the categories of justiciable controversies. I believe too, that by binding ourselves in an ill-considered treaty, one not carefully prepared in its language, not fully thought out as to its consequences, we may do injury. As the Senator has said, better leave to the occasion when it arises the suggestion and formation of an arbitral court to settle the then present controversy, and trust to the statesmanship, to the good will, to the large intelligence and patriotism of the time for the settlement of such a difficulty. To tie ourselves in advance may be an embarrassment. It reminds me of the Irishman and his wife who had been engaged in a little domestic quarrel, and after exhausting themselves in their controversy they sat on each side of the fire to rest. A large Newfoundland dog sat between them, with a cat curled up on his side. Patrick said, "See, Bridget, how the dog and the cat live in peace and harmony." Bridget took her pipe out of her mouth and said, "Yes! Tie them together and see how much harmony there will be." Now we who advocate a general arbitration treaty do not mean to tie ourselves in any such embarrassing fashion. When I say "we" I include the Senate of the United States, for it has put itself upon record in that respect. What we do mean is to say to the world, in this fullness of time, in the beginning of the twentieth century, that hereafter we can conceive of no controversy that is justiciable, capable of being settled by the ordinary principles of law and of justice as implanted in the hearts of civilized people, that cannot and should not be settled by the peaceful means of arbitration, rather than the bloody arbitrament of the sword.

I do not of course criticize, and I am not capable if I wished to criticize, the grounds upon which these late treaties between France and England, which were to be the prototype of treaties with the rest of the civilized world, were so amended in the Senate as to make a great many good and intelligent people believe that the cause of peace through arbitration has been set back. I fully sympathized with the Senate when in the ten Hay treaties the amendment was proposed by that body that the word "treaty" should be substituted for the word "agreement," thus bringing before the Senate for its advice and consent every preliminary agreement which stated the grounds and the scope of the submission to arbitration. Surely that very wise pro-

vision of our institutional government by which the Senate was made a partner in the exercise of the treaty-making power, was conserved as fully as could be desired by the most strenuous advocate, I will not say, of the privileges of the Senate, but of the duty of the Senate, in the performance of which it is called upon to act upon its own responsibility. But if I understand the scope of the treaties that have lately occupied the attention of this country and of this Society and of intelligent men everywhere, it did seem to me that these various things were sufficiently guarded to take those treaties out of the dangers which have been portrayed by the Senator, the Chairman of the Foreign Relations Committee of the Senate. If a treaty is negotiated by the executive, agreeing to submit to arbitration all controversies which are justiciable, surely if the Senate must pass upon the preliminary agreements which define the submission and the scope of the arbitration, then every wise precaution which the makers of our Constitution had set up for guarding this nation against immature and ill-conceived submissions is complied with. And if there was proposed, as another protection, a commission which was, upon the objection of either of the parties that the subject to be arbitrated was not justiciable, to interpose its judgment, then the judgment of that commission was only another safeguard and it would go to the Senate just as it would have gone directly from the executive under the Hay treaties, to be considered in the preliminary agreement defining the scope and the questions of arbitration.

I venture to say so much in such a presence and in regard to this matter about which we all feel so deeply, and which concerns so much the honor, safety and future prosperity of the country, with some hesitation. I have read those treaties. I have tried to put myself in the position of those who were criticizing them; and with all due respect for that great body, the Senate of the United States, which is invested with the power and the duty and the responsibility of considering these matters, I still think that they will find a way for us by which an arbitration treaty that does look to the future and does pledge the faith of this great country that controversies which can not be settled by diplomatic negotiation, will, if justiciable on the ordinary principles of law and equity, be submitted to the arbitrament that is provided for in the treaty itself.

Now there are some other things that have occurred to me in regard to this matter. If a treaty when made is, under our Constitu-

tion, the supreme law of the land, we have of course as a postulate to any treaty and to any action by this government or any other, the understanding that the award of a tribunal of arbitration must when made be rigidly and in good faith conformed to and abided by. There can be no recall of such an award. To provide for an arbitration, and then after the award is made, to submit to any popular vote the question of a possible withdrawal from the consequences of that award, would result in an anarchy that would put us back into the barbarism of the mediæval ages. It is quite impossible therefore to dismiss from our consideration the effect of such treaties without considering somewhat the popular notion that has been bruited in some quarters that any law of the land when announced, either by the Supreme Court or by the arbitrament of a tribunal provided for under our law and Constitution, can be submitted to any other forum for further review. One is quite as impossible as the other.

I said a while ago that the society of nations was a democratic society. Its analogue is in this country, where we have a democratic society, where we have the only democratic government that has ever approved itself in the long annals of time. No other method has ever been devised under heaven by which a self-governing people can enjoy the blessings of liberty, except by the limitations they themselves impose upon the exercise of their own power; and if those limitations can be disregarded, if they can be set aside by anything short of the institutional means provided by the constitution of that democracy, then we have not a democracy, but we have anarchy. That is the only outcome that presents itself to my vision.

Our government, as I have said, is a democratic government; and in its more than one hundred and twenty-five years of existence it has demonstrated the possibility of a people putting themselves under wholesome restraint of making democracy really practicable, of making civil liberty an achievement that is to be durable and permanent; and to talk lightly about dismissing, as not worthy of consideration, the faithful observance of those limitations, seems to me the very height of madness and folly.

And now, gentlemen, believing as I do that this Society is engaged in a great work in the cause of peace, by advocating and introducing everywhere to the minds and intelligence of their countrymen the idea of legality in national relations, I bid you Godspeed, believing that the work before you is one of patriotism and of a true and high national spirit.

The TOASTMASTER. Gentlemen, the event has proved that I was an excellent prophet. The honorable gentleman who has spoken has certainly maintained the best traditions of the independence of the judiciary by recognizing, by that subtle method known to lawyers as "the distinction," the necessary co-ordination between the great departments of the government. He recognizes the value of a judgment, and is as enthusiastic for the maintenance of any judgment as we all are for judgments in favor of our clients, and I take it he is probably right, because the other system would deprive us of clients altogether.

Gentlemen, we pass into another realm. We are going back for a little while to a town called New York. I am glad to say, and New York is honored by the fact, that the Chairman of the House Committee on Foreign Affairs is a New Yorker. Now there is a House Committee on Foreign Affairs. There is not the slightest doubt about it, and you have only to read a little history and an occasional newspaper to find it out. Its members are of such inordinate modesty, and so seldom express themselves save in family gatherings of this kind, leaving to the less numerous branch of the national legislature the more spectacular portion of foreign affairs, that we are apt sometimes to ignore the beneficent results of their unerring, infallible and strenuous labors.

We have in New York a great and unterrified democracy. Some of us belong to it and some of us do not; and some of us belong to it sometimes; and then again not at all. But however that may be, it is usually in the majority. It is composed of a great many elements, coming from various races, all of them ultimately to be put into the crucible of American citizenship and turned into electors. There is no more diplomatic task, there is no task involving a greater knowledge of international tact and ceremonial than to be able adequately to persuade that great, heterogeneous mass of men of all nations that you are the person most competent adequately to represent their interests. Any man who is able to do that in the City of New York is worthy of the very highest honors that the national government can afford. What other training could more adequately fit a man for the difficult, honorable, splendid position as Chairman of the Committee of Foreign Affairs of the House of Representatives, that position which we in New York and all here are so glad is held by Mr. Sulzer, who will now address us.

REMARKS OF HONORABLE WILLIAM SULZER.

Mr. SULZER. My friends, I am glad tonight to be in this distinguished company—the international lawyers of America. I must at the outset, however, make a confession—and confession, the district attorneys say, is good for the State.

The truth is I came here tonight to listen to wise men expatiate on the intricacies of international law, and not discuss the subject myself. I would much rather listen than be heard. When I found I was down on the program for a speech and realized that I would have to say something, I took courage and consulted my good friend here, Senator Fiore, of Italy, and asked him what I should talk about. He promptly replied: "If you can be as witty, and as interesting and as entertaining as those who have preceded you, I hope you will talk about a minute." Let me say it is no laughing matter to make a good speech on international law when you know little about it.

But, seriously, gentlemen, we are favored tonight by having around this festive board many of our own distinguished citizens; and we are singularly honored by the presence here of the Premier of our sister country of the north, the Right Honorable Robert L. Borden. No one is more gratified by his presence here than myself, because I know something about the wonderful land of Canada. I have a cousin living there. She is a thorough Canadian and often writes to me. Now and then we visit each other. She is very patriotic and very emphatic, and years ago predicted that if there should ever be any annexing, Canada would annex the United States.

We welcome Premier Borden to our midst and bid him enjoy himself and fear not—while my cousin lives.

Yes, my friends, I know something of the wonderland the genial Premier represents. I have traveled much through the great land to the north called Canada, stretching away from the international boundary line to the frozen Arctic, and from the Atlantic to the Pacific, one of the greatest countries in all the world, an empire in itself, and destined, as the years come and go to become greater and grander, and more powerful and more prosperous, and I could say more populous every year, especially if we do not do something to keep our own people at home; do not laugh—the government statistics show that last year about two hundred and fifty thousand of our citizens sold their farms in Iowa, in the Dakotas, in Nebraska, in Kansas, and in

Minnesota, and took their families and all their possessions and went into Canada. And these people who leave us and go into Canada are among the best people in all the world. They till the soil. They are prosperous. They add wealth to the world. They are the pioneers in northwestern Canada, and they are making the lands there blossom like a rose. They are making western Canada great and prosperous.

Is this an international question? Not at all. It is a domestic question. Why do these people go to Canada? I know. I have investigated. It is because Canada has better land laws, better homestead laws—in a word, because Borden's government up there is more democratic than our government is down here. That is all there is to it, and if it keeps on, the time is coming when Canada will be talking about annexing us. As a legislator I am trying my best to stop it. I am trying to pass good laws to keep our people at home. I want our Congress to give them the laws they want in the northwest and up in Alaska, good land laws and sensible mineral laws like the laws the Parliament of Canada gives her people in the northwest and in the Yukon. I want to keep our farmers at home, to till the soil in the great corn lands of the middle west. I want to keep our people busy and prosperous in the Inter-Mountain States. I want to give all a chance in America to develop the natural resources of our great land, and to get homes here as easily as they can get homes in Canada, without being held up for years by red-tape in the Interior Department.

Yes, I take a deep and abiding interest in Canada. It is a wonderful country. The people of the United States should visit it more than we do. We ought to go there more instead of wasting so much of our time and substance in going year after year to Europe. We would be wiser and know more about America if we did. The people of Canada are the true friends of the people of the United States. I speak advisedly when I say this, and I speak disinterestedly. We should aid them whenever we can. We should be unselfish. We should extend to them a helping hand in their onward march of progress. We should glory in their prosperity. Their success is our success. They are rapidly forging to the front; their exports and their imports are increasing annually; their trade is becoming more and more important, their commerce more and more valuable; and instead of closing our doors against their products, in my opinion, we should open them wider and do everything in our power to facilitate closer commercial relations.

My friends, so much for Canada. Now a few words for this Society. It is doing a great work and no one wishes it more success than I do. However, it is only on the threshold of its usefulness. It has much to do—much to learn. I asked several members tonight the definition of international law. Not one of them could tell me. I remember when I passed my examinations for admission to the bar the judge asked me to define law. I told him it was a rule of action. If I were asked to define international law I should say it is a rule of international action. There should be a code of international law written by an international parliament of the world and subscribed to by all the nations of the earth. It seems to me it is little more difficult for a great international parliamentary body to enact laws for all the nations than it is for Congress to enact laws for all the States. This is merely a suggestion as a step along the road to universal peace. Take it into consideration and ponder over it. Study it; write about it, think about it, and talk about it. Herein lies progress.

Senator Lodge's remarks about arbitration interested me. We agree substantially about arbitration. I have always been in favor of arbitration. I am in favor of up-to-date treaties in the interest of peace and commerce, but the history of the world demonstrates that there never was a treaty superior to popular prejudice—that there never was a contract between nations stronger than the public opinion of the people of either high contracting party.

Judge Gray spoke eloquently for universal peace—how shall we attain this consummation so devoutly to be wished? In my judgment it can only be finally brought about by international law—enacted through an international parliament—that will be binding on all the peoples of the earth. When the peoples of all the nations are capable of governing through an international parliament to write the laws of nations, and an international court of justice to construe the law and enforce it—then and not till then will war cease to burden man, and universal peace become a thing accomplished.

Yes, gentlemen, the time is coming when nations must live up to the law the same as individuals must do in all civilized countries. If we live up to the law as individuals we are good men and good women and good citizens. If nations would live up to the law of justice and righteousness they would be good nations. There would be no war then. I am a man of peace. It was born in me. As many of you doubtless know, I am a little Irish, a litle Scotch, a little Dutch, and

fifty per cent German. And I married a Quaker. I am so much in favor of peace that I am willing to fight for it any time.

Senator Lodge told us about the Monroe Doctrine. I am in favor of that—because I am a Pan-American. Everybody on the Western Hemisphere—whether a Canadian or a Mexican—a Central American or a South American—is an American to me.

Ours is the great republic. We have made it so. We believe in it. We are proud of it. We glory in it—glory in all that it is, all that it was, and all that it will be. And our republic—these United States—ought to be too big to kick a cripple, especially when the cripple is down. There is no more necessity for us to invade our sister Republic of Mexico because there is a riot at Jiminez than there would be for us to invade our sister state of Canada if there should be a riot at Quebec. The people in Mexico, and in Central America and in South America are our friends. They live in splendid countries, in true republics, and they are the finest people in the world in gratitude and in hospitality. Some of their writings on international law have settled great principles. They are a contented people. They live in a land of sunshine and flowers. I wish more Americans would travel in Central and South America and get acquainted with the people of those wonderful countries. How full of gratitude to us they would all be if we would leave them alone to work out their own destiny.

The people of these Central and South American countries are friendly to the United States. They look to us for protection and sisterly sympathy; they need our help in their industrial progress; they desire our aid in the marketing of their products; they want our financial assistance in the development of their great natural resources; and their resources and their products are greater and richer than those of countries far away across the Atlantic and Pacific oceans. We should aid them in their struggle for better conditions; we should extend them a helping hand in their onward march of progress; we should glory in their prosperity. As I said of Canada, their success is our success. Their exports and imports are increasing annually; their trade is becoming more and more important; their commerce more and more valuable. We want their products and they want our products, and all barriers that prevent a fairer exchange of goods, wares and merchandise between us and these countries should, in so far as possible, be eliminated. It will be for the best interests of the people of our own country, to the lasting benefit of the people of these

Central and South American countries, and for the mutual advantage of each and all—binding us together in closer ties of friendship and making for the peace and the prosperity and the industrial progress of the Western Hemisphere.

We want peace on the Western Hemisphere. That is easy. We can have it if we want it. All we need to do is just live up to the golden rule law of nations, and do unto others as we would that others should do unto us. That is all—and it is all so simple and so easy.

We should not kick one of these little republics when it is helpless. It reminds me of the Irishman who died and left all his property to Callahan, "because he never kicked me when I was down." And so these little republics to the south just ask us not to kick them when they are down.

Why should we kick them? Would we like it if the situation were reversed? I will stand with Senator Lodge, and with every other representative in the Capitol until the cows come home, in favor of minding our own business and not be trying all the time to mind the business of other peoples in other countries.

So much for that, and that is a good deal. Yes, a great deal more than I expected to say when I got up to make an impromptu speech. I know nobody here, however, will repeat what I have said tonight. It might offend some and be gratifying to others of whom I think much.

Now a few words in conclusion. We will never have peace in the world until we have common sense in the world. We will never have common sense in the world until we get over national pride, and national prejudice and national selfishness and national injustice. Nations are all more or less human. History teaches us that nearly all the great wars of the world have been fought for conquest. We should put an end to wars of conquest. It could easily be accomplished if all the great nations could once agree that no nation should be permitted to take by force any territory from any other nation. That would settle it. That would reduce war to a minimum. We will never be able, however, to go that far along the road of peace and progress and true civilization until by common consent all the nations of the world agree to establish an International High Court of Justice. In our States we have courts, and we have sheriffs to execute the orders of the courts. In the national government we have courts and we have marshals to execute the decrees of these courts. When

individuals have trouble they do not settle the dispute now as of old by combat, but they get a lawyer and take the case into court. When the case is tried and decided, that settles the controversy, no matter which side is dissatisfied, because there is the power of the court—the sheriff—to put the judgment into execution. So to bring about universal peace we must begin by establishing an International High Court of Justice on whose bench all the nations of the world will be represented. Whenever a nation has a grievance against another nation, before it can go to war about the controversy, it must take the matter into the International High Court of Justice, and when the court renders its judgment, the nations to it must be bound by it.

When we get such an International High Court of Justice and an international code of laws founded on righteousness and justice, the bright day of peace will be at hand and cruel war for conquest will be no more. Then and not tell then will peace reign on earth, with good will to all nations, and progress and prosperity in the name of humanity and civilization will walk hand in hand from the Occident to the Orient, and from one end of the earth to the other.

The TOASTMASTER. Gentlemen, I had not overheard the conversation of my friend Mr. Sulzer with the Honorable Senator Fiore of Italy, and therefore I was unable to announce his subject. I can only say that I anticipated that it would be fraught with what New Yorkers call *materia per fervida,* or what you in Washington call *hot stuff.* I did not, however, realize that he was a mind reader. Coming down on the train I had by ceaseless cogitation between naps prepared a very able and eloquent exposition of our relations with Canada, which I find that for some reason or other the Honorable Chairman of the House Committee on Foreign Affairs has been able to get off before I could. He reminds me of the late Colonel Ingersoll, who had an extraordinary memory. I remember when I was quite a youngster in the law school, I was with my father before one of the Circuit Courts of Appeal. My father had a brief and was going to make an argument. Colonel Ingersoll was on the same side, and said to my father: "Mr. Coudert, may I look over your brief?" to which father replied, "Certainly, sir," and the Colonel looked it over. Then he made his speech, and when father rose to address the court he said: "Honorable Judges, all I can say is that I never knew that my brief would sound so well when declaimed."

My friend has spoken of prejudices that keep us from peace; but let us remember that the prejudices are largely of our own making, and that many of our difficulties come from the fact that we refuse to recognize that humanity is very old, and has gotten over a great many prejudices. There was a time when prejudice said one man should eat another man because he was so old that he would be a distinct charge upon the community, and cannibalism was a highly honored and excellent function. But we got over that prejudice, because there were some men big enough and strong enough to say to other men, "We cannot for all time and all humanity go on paying attention to that kind of a prejudice. Let us get over it."

Let us endeavor to get away from such prejudice by laying stress upon the normal method of settling disputes. That normal method was once war, but today we are making progress in the direction of normalizing the method of submitting those disputes to properly constituted tribunals. Unless we do make progress in this direction we shall have to settle them as men once did, by conflict in the open field rather than by recourse to the crocodile tears of lawyers.

As to Canada, we all believe in reciprocity; not the reciprocity that is based upon mere economic considerations. What are economic considerations? The world is governed by ideas. Mr. Taine, the great French thinker, said you could judge a people by their ideas. It is of but little moment that we may or may not agree as to certain physical or economic matters with a great neighboring country; but the point is that there are perhaps no two other countries in the world, one of which can reject a treaty offered by the other, and the same friendly relations go on unbroken. If there is any better test than that I should like to know it. It is like two brothers who may have a discussion over the color of a necktie, but when the discussion is over, the brotherly affection and relation remains absolutely unchanged, and the mere fact that there was such a discussion indicates that that relation exists. And I take it that there are no two other countries in the world which can, as Canada and the United States have done, entrust the most difficult and arduous question of boundary, and other great questions, to a commission which has the right to determine upon its own jurisdiction, and formulate its decision, and then have nobody, not even the most chauvinistic patriot, suggest that there should be a recall or an appeal.

Therefore, gentlemen—and I say it not in the ordinary phrase of

occasions of this kind, necessitated by politeness—therefore we are infinitely grateful that in pursuance of that real, deep and fundamental reciprocity which is the basis of all international relations, sanctioned by treaty or not, and to which treaties are a mere incident, we have here the great, the distinguished, the generous representative of that noble Dominion over the way. I call upon Mr. Borden, Prime Minister of Canada.

Remarks of Right Honorable Robert L. Borden, Premier of Canada.

Mr. Borden. Mr. Toastmaster and Gentlemen. I am almost overwhelmed by the very delightful warmth of your reception, and also by the very kindly references that have been made by more than one of the speakers, and especially by yourself, to the country which I have the honor to represent before this very distinguished gathering.

I left my home in Ottawa about three weeks ago for the purpose of taking a very much needed holiday among the delightful, sunny hills of Virginia. While I was there I had communicated to me a very cordial invitation to be present on this evening, and so I was very glad indeed to cut my holiday short by two or three days, in order that I might have the honor and pleasure of being present here tonight.

It was not indeed my intention, when I left Ottawa, to make any public addresses before returning; and you can understand that in the stress of a political life which has extended over a good many years, one has oftentimes rather a surfeit of public speaking; but an occasion of this kind is so different from many of the ordeals through which a public man has to go that I welcome it with the greatest possible enjoyment. In fact since I left Ottawa I have had a somewhat novel experience, because the night before last I had the pleasure of sitting in a room in the New Homestead Hotel in Hot Springs, Virginia, and speaking to seven hundred men who were gathered in New York City. That was a novel experience, and the conditions from certain standpoints commended themselves very much to a man in public life. There was a certain immunity from not too fresh eggs and not too soft brick-bats that I am sure would commend itself to every one who has gone through the ordeal of a very strenuous election campaign. However, it really is not necessary that the age of the telephone should have arrived in order that one might address an audience whom one does not see; because I remember in the old days, before the Northwestern Territories of

Canada were organized into Provinces, the tale is told of two Scotchmen who, notwithstanding very stringent laws forbidding the importation of anything in the way of an intoxicant into that country, used to contrive to smuggle in now and then a bottle of Scotch whiskey. There was a compact between these two men, who lived some seven or eight miles from each other, that whenever one succeeded in doing this, he was to communicate the desirable result to the other, in order that their enjoyment might be in common. So on one occasion, one of these Scotchmen having succeeded in obtaining an unexpected bottle of whiskey, drove over to see his friend, and found that by some singular chance his friend had been enjoying the same good fortune; and so there were two bottles for that night. In relating the story afterward one of these men declared that the evening had been most delightful and enjoyable; but he said "Sandy McPherson is an awful man to drink. He sat at the table with the two bottle of whiskey before him, and he drank, and he drank, and he drank, until I could na' see him ony mair."

Now I merely mention that incident to indicate that even before the age of the telephone it was possible to address an audience without being able to see it.

I have been very much delighted indeed with the addresses which have been made to-night; and I am convinced that, whatever differences there may be as to methods, there is absolutely no difference of opinion as to the result which is desired by all those who have spoken.

Some criticism has been made of any policy which would seek to force upon nations an arbitration treaty in advance of public opinion. Now it seems to me that there is a good deal of force and a good deal of justice in what may be urged from that standpoint. In my experience of law-making it has always seemed to me that you could teach the people no worse lesson than the enactment of a law so far in advance of public opinion that they felt themselves more or less at liberty to disregard it; and while all of us are desirous that the arbitrament of the sword should be put to one side, and that the arbitrament of the tribunal should take its place, we must be careful lest in our zeal to forward that movement we enter into any engagement which will not be kept sacredly in the end. But that does not make less important the work of societies like this, whether in the United States of America or throughout the rest of the world; because it should be our aim to bring international public opinion up to the standard where we

can have the advantage of these treaties to the fullest degree, so that in the end the danger of war between the civilized nations of the earth shall be brought down to the very minimum.

I venture to thank my friend, Mr. Sulzer, who has a very engaging Irish wit, notwithstanding his name, for the very kindly reference which he has made to Canada, a country which certainly possesses very great material resources, which, I think, is inhabited by a strong, vigorous population, and which at the present time is in a very interesting period of its development.

I know the hour is late, and I must not trespass much upon your attention, but perhaps I may be pardoned for giving you one or two illustrations of that development within my own experience.

In 1902, I went to the northwest of Canada in a political campaign. I addressed an audience in the town of Calgary, a town at that time of thirty-five hundred people. I went back in 1907, and again in 1911; and in 1911, nine years after my first visit to that town, I had an audience more than twice as large as its entire population when I first visited it nine years before. It had then grown to be a city of sixty or perhaps sixty-five thousand people.

The same is true of Regina and Edmonton and many other towns in the west; and I am bound to say that it is very inspiring to see a great country like that in a period of such tremendous development, and to realize also, as I think I am entitled to realize, that the standards of civilization are keeping pace with the tremendous material development in that great western country.

Reference has been made to the relations between Canada and the United States of America. My friend the Toastmaster has alluded to the question of reciprocity, which was very much to the fore in Canada during the past year, and the echoes of it have not all died out in that country even at the present time. May I be permitted to point out in that connection, that the terms under which the treaty was made were such as to leave it to the legislature of each country as to whether or not that particular agreement should be accepted. Note that our system is different from your own, that a Parliamentary crisis may bring about a general election in Canada, as in Great Britain. A general election was brought about in Canada, and the people of that country, as I conceive it to have been their perfect right to do, pronounced what they believed to be a fair, just and true verdict upon that question from their standpoint. And I should like also to say

in this regard that upon the statute book of Canada, from 1879 until 1898, we had a standing offer of reciprocity to the United States of America, which this country in its wisdom did not see fit to accept. I am sure that there was no person in Canada who ever for one moment questioned the absolute and perfect right of the government and people of the United States to decline to accept that offer which was open to them during those nineteen years; and I understand perfectly that with your broad-minded spirit you also realize that it was perfectly open to the Parliament and the people of Canada, having regard to the policies which we had entered upon in 1879, and which have not been materially changed since—that it was perfectly open to us to maintain those policies, and to consider, as we did really consider, that the acceptance of that particular agreement would have involved a very material departure from the policy which Sir John MacDonald inaugurated in 1879. Believe me—I do not need to assure you of it—that the result in Canada on that occasion was not dictated in any respect, in any degree whatever, not in the slightest degree, by any feeling of unfriendliness toward the people of the United States; because we know that the relations between the two countries during the past twenty-five years have been most friendly and cordial in every way, and I do not doubt that in all the years to come that friendliness and cordiality will be maintained to the full.

Mr. Toastmaster and Gentlemen, reference has been made to treaties between Great Britain and the United States, most of them concerned with the affairs of Canada. Beginning with the Geneva Award of forty years ago, that did not particularly concern Canada. But take the Halifax Award of 1877, the Paris Award with regard to the Bering Sea, and that award which has been so forcibly and aptly referred to by Senator Lodge, the award of the Hague Tribunal with regard to the Treaty of 1818. In thinking after I arrived here this afternoon, of what had been done by these two countries, I was able to enumerate some fifteen or sixteen cases in which important matters of difference between Great Britain and the United States, most of them with respect to Canada, had been settled by treaty or amicable agreement. I think that is a great example which these two countries have given to the world, and I do not know of any important question at the present time between the British Empire, in the right of Canada, and the United States of America, that still remains unsettled. Everything has been happily brought to an issue in one way

or another. We have the St. John River Commission dealing with one matter. We have the boundary commission dealing with another matter. We have a commission delimiting the boundaries of the two countries through the Great Lakes. We have the commission which is dealing with the question of the use of water on both sides of the line. We have the pecuniary claims commission, we have the commission making regulations with regard to fishing in international waters.

In respect of all these matters there has been an amicable agreement between the two countries, and I would like to say also that there is every reason why it should be so. The people of Canada and of the United States are indistinguishable from each other. Only a few months ago I was speaking in the City of New York, to a gathering composed as to three-fourths of men who had been born in Canada and who had removed to the United States, and as to the remaining fourth, of men who had been born in the United States. I would defy any human being to go amongst those people and tell me which of them had been born in Canada and which in the United States. Along the boundary line you see no distinction between the people. And more than that, Mr. Toastmaster and gentlemen, our problems in Canada are almost identical with those which you have in the United States. I realize that you have some that we have not, and possibly we have some in Canada that you have not; but as to the great problems of democracy that have been alluded to so eloquently by Mr. Justice Gray tonight, they are common to the people of Canada and to the people of the United States. It ought to be the aim and purpose of democracy to enact such laws as shall give to the citizens of each country, so far as may be humanly possible, equality of opportunity. I do not mean equality of results, because inasmuch as men differ widely in their capacities and in their energies, there can be no such thing as that in an individualistic system of national organization; but so far as equality of opportunity is concerned, which ought to be the aim and purpose of democracy, it is our aim and purpose in Canada, as well as your aim and purpose in the United States.

Within a few years we shall celebrate the century of peace between the Empire and the Republic. I trust it will be fitly celebrated; and there is one most worthy proposal that I should like to see borne in mind and taken into consideration by the statesmen of both countries before that celebration becomes an actual fact. We made with each

other a compact, not in the form of a treaty, but through the interchange of notes or communications, nearly one hundred years ago. As a result of that compact there is today between these two countries a boundary line of nearly four thousand miles that is unique in recorded human history; a boundary line undefended by man or gun, and upon the Great Lakes no armament beyond the trifling and inconsiderable armament which was specified in the notes to which I have alluded. Surely, no better recognition could be made of the hundred years of peace through which we have happily passed than to place that agreement upon some more permanent foundation than that which it possesses today. At the present time it may be denounced by either party upon six months' notice. The people of Canada and the people of the United States ought to have sufficient confidence in each other, ought to have sufficient neighborly feeling for each other, ought to have sufficient sense of kinship, because they are of the same kin and of the same blood and of the same race, and they enjoy practically the same laws—they ought to have enough sense of kinship to each other and confidence in each other to put that agreement in a more permanent form, in honor and in memory of the hundred years of peace between the two great nations.

In conclusion, Mr. Toastmaster and gentlemen, permit me to say that I have enjoyed very much indeed the honor and pleasure of being here tonight; and the addresses that have been given. So far as I am entitled to bring to you and the people of this great nation any message from the people of Canada, I bring to you a message of good will now and in all the years to come.

The TOASTMASTER. Gentlemen, we always knew that Canada did things well. We now know that she is a specialist in choosing Premiers. The Premier has explained to us that Canada is an excellent place to be born in, just as good as the United States. I can say from a very limited personal experience that is a mighty good place to be in at almost any time.

Gentlemen, at this table we have a galaxy of international legal intellects such as the world has never seen since the fall of the Roman Empire. I am perfectly ready to admit that some of us were very late, but we finally got here, and we are here now. Two of these honorable gentlemen are too modest to speak. They are great authorities on international law. Senator Fiore we all know. When, upon consulting his great work, I have found that it was against me, I have

had recourse to the equally great works of Señor Olivart of Spain, and fortunately for the well-being of the profession and for the due respect owing to clients, these great authorities on international law understand the fundamental importance for the bar of radically and entirely differing from each other on most elementary propositions. Therefore, despite their great modesty, it would hardly be fair to call upon them at this late hour to reconcile all their knowledge into that code to which Mr. Sulzer referred, which would make the bench and the bar a supernumerary inutility. I take pleasure, however, in calling upon one who was the delegate of Norway to the Second Peace Conference and is the Secretary General of the Inter-Parliamentary Union, Mr. Christian L. Lange, to say a few words to us, reminding him at the same time that as we here have no midnight sun, as they have in Norway, we will have to go to bed before we see the sun again. With these few words of gentle intimidation I leave the floor to him.

Remarks of Mr. Christian L. Lange.

Mr. Lange. Mr. Toastmaster and Gentlemen, I should very inadequately describe my feelings on rising here if I said they were feelings of pleasure. I should rather say that they are mixed with feelings of awe. I beg you to realize my situation: First, the distinguished audience, second the galaxy of orators who have preceded me; third, the Toastmaster, a real master of the art which might popularly be described as killing with kindness. Nevertheless it is a great satisfaction to me to stand here in the presence of the American Society of International Law. Since its beginning I have closely followed its work, and have been a regular reader of that excellent journal which is the exponent of its views. I think it may be said with safety that this Society of International Law distinguishes itself from other societies of the same kind, through the system of broad lines on which it is developed. Jurists are perhaps by definition liable to be conservative. They are looking for law, for statutes, for authority, and for precedent. International lawyers are therefore likely to look askance at the efforts for creating an international organization. Most of them will view with suspicion what is called with a popular though perhaps slightly improper name, the Peace Movement.

While crossing the Atlantic to this country I read in one of the periodicals the following letter which had been sent to the editor by a prominent professor of international law at a German university:

I take the liberty of asking you to discontinue the sending to me of the *Friedenswarte,* as I take absolutely no interest whatever in Christian Science, table sauce, peace movements and such like psycho-pathic phenomena.

Well, gentlemen, you can imagine how a man belonging rather to the psycho-pathic movement looks upon himself when he tries to express his feelings here. I am sure, nevertheless, that this German professor will scarcely find his sentiment echoed in this society. My experiences of this morning even tend to prove that I am rather myself to be considered as the representative of conservative and skeptical views, at any rate with regard to some problems before us—a feeling, I am bound to say, which is not a little interesting to me through its novelty.

The field before this Society is a wide one. The work of elucidating the problems of international law is the more arduous, because rules are laid down for only some parts of the system, and because we have before us the task of creating the machinery for enacting it, and the judicial institutions which are to act upon it. I think it is therefore very wise for the Society to observe not only an attitude of benevolent neutrality toward the different agencies in the great movement for international reform, but, as it has done, to invite them to active cooperation. Indeed nothing is more needed than cooperation between the different agencies of the international movement. On the one hand jurisprudence alone, not backed by popular feeling, will be barren and void of results. On the other hand, the popular movement, forced to appeal to sentiment mainly, will lose itself in empty clamor and not be able to crystalize in practical reforms.

It has been said of the peace movement, the movement for international reform, that the time of the apostles has passed, and the time of the organizers is now at hand. It is true, and it is only half true. You can never, in a forward movement, do without the apostle, though a time may have come when the organizer is more needed than before. I think the right solution will be that they join hands. One cannot do without the other, and I think it is specially needed that the peace movement shall receive for its constructive work, for the preparing of the international society of the day after tomorrow, the advice and the help, in a sympathetic

spirit, of the lawyer and the publicist. That is what this Society, and I may add my Society, has done, and what they are doing still. I would like to say in conclusion that I think the American Society has one great advantage in being an American society. Judge Gray, in his eloquent address, rightly spoke of the international society as a democratic society. The society of nations will never become a reality if it is not based on perfect democratic equality; and because you have a century's experience and a century's practice of democracy, you will have better opportunities of forwarding the great society of nations along democratic lines than any other nation in the world.

The TOASTMASTER. Gentlemen, if you had the slightest doubt as to the international potentiality of this table, if any skepticism on that subject existed in your minds, it has no doubt been dispelled by the last speaker. And permit me to say that if it had not been for the rather constant interruptions forced upon the Toastmaster by the eminence of the gentlemen who surround him, the meeting would have been over some time ago. Be that as it may, the hour has arrived when all good men either go to sleep or go to New York. I assume that you will go to sleep, and the Toastmaster is constrained to go to New York. I thank you all for the very kind attention you have lavished upon this table, and the appreciation which you have shown of the remarks to which you have listened.

Treasurer's Report.

April 28, 1910 to April 25, 1911.

PRINCIPAL ACCOUNT.

Receipts

1910		
April 28,	Balance on deposit, carried forward from previous account..	$247.81
	Life membership dues, 1 life member at $100.....	100.00
1911		
April 25,	Balance on deposit at Riggs National Bank, Washington, D. C.	$347.81

INCOME ACCOUNT

Receipts

Balance on deposit at Bank, carried forward from previous account			$3,273.59
(George Streit's overpayment of 1909 dues, amounting to $3.70, credited to 1910 dues.)			
Annual Dues for 1907,	2 members at $5 each.....		10.00
" " " 1908,	4 " "		20.00
" " " 1909,	18 " "		90.00
" " " 1910,	238 " "		1,190.00
" " " 1911,	495 " "		2,475.00
Exchange on checks			.23
Foreign postage 1910.....		$36.81	
" " 1911.....		43.84	
			80.65
Subscriptions to Journal			1,406.12
Income from investment of life membership dues in 4 $500 Central Pacific first mortgage 4% bonds, 8 coupons (4 due August, 1910; 4 due February, 1911).....			80.00
Proceedings			20.25
			$8,645.84

Expenses

Secretary's Disbursements:			
Stationery, postage, express charges, etc. (Checks Nos. 212, 218, 229, 231, 235, 252).....		$54.74	
Supplies:			
Stationery, notices, circulars, receipt books, etc., Byron S. Adams (Checks Nos. 211, 223, 226, 238, 246, 254).....	$194.00		
	$194.00	$54.74	$8,645.84

Forward		$54.74	$8,645.84
Wm. R. Ficke Co. (Check No. 216)	1.75		
Gerry & Murray (Check No. 233)	4.50	200.25	
Journal:			
On account of publication:			
Baker, Voorhis & Co. (Check No. 244)	$2,407.75		
On account of postage:			
Baker, Voorhis & Co. (Check No. 244)	81.40		
On account of preparation:			
M. M. Hanna (Check No. 215)	$6.25		
Otis G. Staunton (Checks Nos. 218, 224, 236, 255)	200.00		
Clemence Martin (Checks Nos. 232, 249)	81.25		
Chas. G. Fenwick (Checks Nos. 245, 248)	60.00		
Weed Parsons Printing Co. (Check No. 247)	25.20		
A. S. Gitterman (Check No. 256)	22.00	394.70	
On account of book review:			
London Times (Check No. 241)	25.48	2,909.33	
Salary Account:			
Business Manager (Checks Nos. 208, 214, 217, 220, 222, 224, 228, 230, 234, 239, 250, 257)	$1,200.00		
Assistant to Treasurer (Checks Nos. 240, 251, 258)	75.00	1,275.00	
Furniture:			
A. Zichtl & Co.—bookbinding—(Check No. 209)		19.70	
Reprints:			
(Checks Nos. 227, 253)		139.21	
Advertising:			
Stationery and printing (Checks Nos. 246, 254)		166.00	
Proceedings of 1910 Annual Meeting:			
Printing, etc. (Check No. 237)	$568.24		
Reporting meeting (Check No. 210)	75.00	643.24	
		$5,407.47	$8,645.84

Forward		$5,407.47	$8,645.84
Banquet:			
Willard Hotel Co., banquet and flowers	$476.50		
Tips to waiters	21.50		
	498.00		
Mr. Finch paid cash received	475.00		
Balance (Check No. 213)	$23.00		
Byron S. Adams, printing menus, etc. (Checks Nos. 211, 221)	104.00	127.00	5,534.47
Balance on hand April 25, 1911			$3,111.37

Audited and found correct:
J. H. Ralston,
Walter S. Penfield.

Treasurer's Report.

April 26, 1911 to April 25, 1912.

PRINCIPAL ACCOUNT.

Receipts

Life Membership dues, 23 life members at $100 each..... (20 life members living)		$2,300.00
Investments		
June 23, 1906, 1 $500 Central Pacific first mortgage 4% bond at 102 with commissions.....	$510.63	
Dec. 21, 1906, 1 $500 Central Pacific first mortgage 4% bond at 100½ with commissions and exchange on check..	503.73	
Nov. 14, 1907, 1 $500 Central Pacific first mortgage 4% bond at 90 with commissions	451.08	
July 2, 1908, 1 $500 Central Pacific first mortgage 4% bond at 97½ with commissions	486.75	1,952.19
April 25, 1912, balance on deposit at Riggs National Bank..		$347.81

INCOME ACCOUNT

Receipts

Balance on deposit at Riggs National Bank, carried forward from previous account		$3,111.37
Annual Dues for 1910, 27 members at $5 each.....		135.00
" " " 1911, 295 " " "		1,475.00
" " " 1912, 578 " " "		2,890.00
Exchange on checks		.47
Foreign postage 1911.....	$50.76	
1912.....	72.82	123.58
Subscriptions to Journal		1,621.75
Proceedings		21.41
Income from investment of life membership dues in 4 $500 Central Pacific first mortgage 4% bonds, 8 coupons (4 due August, 1911; 4 due February, 1912).....		80.00
Banquet Fund		605.00
Overpayment by Mr. Theodore M. Taft		5.00
		$10,068.58

Forward			$10,068.58
Expenses:			
Salary Account:			
Business Manager (Checks Nos. 260, 267, 274, 276, 286, 292, 297, 302, 309, 314, 318, 324)	$1,250.00		
Assistant to Treasurer (Checks Nos. 259, 264, 273, 278, 282, 288, 291, 298, 304, 310, 312, 317)	300.00		$1,550.00
Secretary's Disbursements:			
Postage, telegrams, express charges, car fare, etc. (Checks Nos. 261, 266, 275, 277, 287, 293, 303, 308, 315, 319)			115.50
Treasurer's Disbursements:			
Postage, etc. (Checks Nos. 279, 305, 311, 320)			11.50
Supplies:			
Stationery, notices, circulars, receipt books, etc.			
Byron S. Adams (Checks Nos. 262, 272, 290, 294, 299, 306, 316)	$146.50		
Fred S. Lincoln (Check No. 284)	.50		147.00
Subscriptions:			
Baker, Voorhis & Co. (Check No. 296)			2.50
Refund of Overpayment:			
Theodore M. Taft (Check No. 313)			5.00
Furniture Account:			
A. Zichtl & Co. (Checks Nos. 270, 283) book binding	$44.65		
Fred S. Lincoln (Check No. 280), book case	30.00		74.65
Journal:			
On account of publication:			
Baker, Voorhis & Co. (Check No. 321)	$2,421.50		
On account of postage:			
Baker, Voorhis & Co. (Check No. 321)	94.60		
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